

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, March 31, 2004, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Jon Carlson, Eugene Carroll, Roger Larson, Dan Marvin, Melinda Pearson, Mary Bills-Strand, Lynn Sunderman and Tommy Taylor (Gerry Krieser absent); Marvin Krout, Ray Hill, Mike DeKalb, Brian Will, Becky Horner, Greg Czaplewski, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Mary Bills-Strand called the meeting to order and requested a motion approving the minutes for the regular meeting held March 17, 2004. Motion for approval made by Taylor, seconded by Carroll and carried 8-0: Carlson, Carroll, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

### **CONSENT AGENDA**

#### **PUBLIC HEARING & ADMINISTRATIVE ACTION BEFORE PLANNING COMMISSION:**

March 31, 2004

Members present: Carlson, Carroll, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor; Krieser absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 04016 and WAIVER NO. 04004.**

Sunderman moved to approve the Consent Agenda, seconded by Carroll and carried 8-0: Carlson, Carroll, Larson, Marvin, Pearson, Bills-Strand, Sunderman and Taylor voting 'yes'; Krieser absent.

Note: The action on Waiver No. 04004 is final, unless appealed to the City Council by filing a notice of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 04012**  
**FOR A WIRELESS FACILITY**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 148<sup>TH</sup> STREET AND HIGHWAY 2.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Planning staff recommendation: Deferral, pending submittal of a corrected legal description.

Ex Parte Communications: None.

Proponents

1. **Doug Rogers, LCC International**, 1023 Lincoln Mall Road, presented the application on behalf of the applicant, US Cellular. He did not object to the staff recommendation of deferral. This overall US Cellular network project consists of 45 sites, not all being in the City of Lincoln. He has been a part of other carrier build-outs and is aware of the sensitivity to new towers. He assured that this applicant has done everything possible in order to limit the amount of new towers. This application is for one of three new towers to be located on privately held land--there are two in the city and this one in the county.

Taylor moved to defer, with continued public hearing and administrative action scheduled for April 28, 2004, seconded by Larson and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Krieser absent.

**WAIVER NO. 04005,**  
**LOT WIDTH-TO-DEPTH RATIO,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S. 37<sup>TH</sup> AND CALVERT STREETS.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Planning staff recommendation: Deferral until April 14, 2004.

Ex Parte Communications: None.

Motion to defer, with continued public hearing and administrative action on April 14, 2004, made by Taylor, seconded by Carlson and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Krieser absent.

There was no public testimony.

**CHANGE OF ZONE NO. 04014**  
**TO AMEND THE ZONING ORDINANCE**  
**REGARDING ON- AND OFF-SALE OF**  
**ALCOHOL IN THE B-2 PLANNED NEIGHBORHOOD**  
**BUSINESS DISTRICT AND THE B-5 PLANNED**  
**REGIONAL BUSINESS DISTRICT.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Staff recommendation: Approval, provided "Dedicated City or County Park Land" is changed to "Park (Excluding Golf Courses and Hiker/Biker Trails)" throughout the proposed ordinance.

Ex Parte Communications: Bills-Strand and Pearson indicated that they had discussions with Kent Seacrest regarding the exhibits. Carlson indicated that he attended the Neighborhood Roundtable meeting when this ordinance was discussed.

Brian Will of Planning staff submitted two letters in opposition from individuals with the Vavrina Meadows Homeowners Association.

Additionally, Will submitted written clarification of Item #4 on page 1 of the staff report which summarizes the proposal:

"4. The exterior door will be 100' away from a day care facility, church, state mental institution, park, or residential district as measured by the shortest, most direct distance unless there is an intervening exterior wall. In that case, the distance is measured from the exterior door opening along the exterior base of the building."

Proponents

**1. Kent Seacrest** appeared on behalf of **Ridge Development Company and Southview, Inc.** Seacrest stated that he appeared previously to discuss the administration's proposal to remove mitigation on liquor special permits. The City Council approved that legislation, which is basically the "one size fits all" where we now have the 100' rule from any point of the building

measured back to the residential district line. That ordinance now applies uniformly, no matter what the zoning might be.

Seacrest proposed that certain zones have unique characteristics, such as B-2 and B-5, which are the subject of this text amendment. B-2 and B-5 have a use permit process, which is a distinction from special permits. "Special permit" assumes that it is not a good land use for that zoning. "Use permit" has the opposite assumption—these are uses that we do want in this zone, but the use permit provides site review. It is assumed that alcohol is an accepted use in the B-2 and B-5 district. The next distinction is the setbacks. B-2 and B-5 are the modern commercial zones which provide a lot more protection and buffering than the older B-1 and B-3 zones. To begin with, there are larger setbacks. Additionally, the B-2 and B-5 are in the newer areas and are bigger sites than those found in the B-1 and B-3. Seacrest believes it would seem more appropriate to go with a set of rules unique to these two use permits zones, B-2 and B-5.

Instead of measuring the distance requirement from the building, the proposal in B-2 and B-5 measures the distance requirement from the front door because that is where the activity to the neighborhood starts. The activity also ends up in the parking lot, so it's not just the front door measurement but also the parking lots. The proposal suggests that the impact starts at the door and ends at the parking lot. This proposal measures from the front door and pushes the parking lots further away than they are today. The cars would be at least 50' back and not right on the property line. Today the side yard setback is 20' in the B-2. This proposal requires 50' setback, making it tougher and a clearer standard.

Seacrest then explained the exhibits attached to the staff report. The measurement to the front door is measured around the base of the building as opposed to through the building. If there are two doors serving the business, both doors must meet the 100' distance measurement.

Seacrest then referred to the letter of concern from the Vavrina Meadows neighbor. He was shocked to see this letter because he talked with the author of the letter before the Neighborhood Roundtable meeting, and he called her after the Neighborhood Roundtable meeting. At that time, she lead him to believe that she was in support. As recent as last Sunday, she said that she liked what was being done. Seacrest stated that the applicant is going forward with the mitigation plan to which the letter refers.

Carlson asked whether the applicant is acceptable to the amendment proposed by the staff regarding reference to park land. Seacrest indicated that he is comfortable, although he would be more comfortable including "dedicated" park land.

Carlson asked the applicant to explain the measurement of the door facing the residential district at 150'. Seacrest explained that the existing ordinance requires a door facing the

neighborhood to be 150' away. This amendment does not change that requirement. This amendment clarifies that the 150' means when it is "facing" the neighborhood, and Seacrest considers "facing" to be a perpendicular line, and that is what is being proposed.

Carlson noted that the current ordinance provides that the 150' includes the loading and unloading in the rear. Seacrest does not believe the loading door is the issue. The loading doors need to be in the back. If you agree that it should be in the back, then you have to have a door back there. If you allow the public to go through the back door, then you have to meet the requirements. If the back door is not for public entry, but only deliveries, then you can have the back door and not meet the 100' test.

Carroll observed that if you have a big box store with the doors in the center, you could use up 100' almost across the face of the building, meaning that the setback in the rear would be 50' in the B-2 and 100' in the B-5. With a 30' depth store, the neighborhood would only be 80' from the front door. Seacrest agreed. His theory is that retailers do not want a lot of depth, so you do not want to force the building out front, creating dead space in the back (sprawl).

Carroll then referred to a strip mall in B-2 with 20' side yard that wants liquor sales, but the mall is in that side yard. How do you handle that? Seacrest stated, "you don't". Carroll then inquired about pre-existing solutions. Seacrest believes that if it is there today, they are fine, but in the future, they need to meet the 50' setback requirements. Similarly, if you have parking there today and you decide to put liquor in, you have to move those parking stalls out. This is an attempt to get the balance of having the neighbors protected and not create a lot of dead zone space in the back.

Carroll confirmed that the non-parking provision for rear and side yards does not include loading trucks. Seacrest confirmed that driveways and loading areas do not apply. It is purely the patron parking. Employee parking would also not be allowed in the loading area.

**2. Kathy Siefken**, Executive Director of the **Nebraska Grocery Industry Association**, testified in support "because it is better than what we've got". The City Council passed the 100' rule, so in the B-2 and B-5 there is the extra dead space in the back of the stores where things happen that we don't want to have happen. We don't want employees parking in the back of the store. We need enough room to drive the truck behind to load and unload. We don't want people back there. Another concern is the pre-existing situation – what happens to a grocery store that has some catastrophic event – can you rebuild and still retain that liquor license? This ordinance won't take care of those stores in the older parts of town, but as far as future growth, they will be able to compensate and build according to these ordinances. This ordinance does fix about half of the grocery industry's problems.

Opposition

1. **Mike Morosin**, testified as past president of Malone Neighborhood, suggesting that in some ways this does clean up a little bit of the problems but in the older neighborhoods it spills away from the parking lot into the neighborhoods. When you have to pass these ordinances you have to look deep inside to what the ramifications are going to be. He suggested that surveillance cameras can take care of that extra 50' behind the store. The buffer zone would work well for the residential areas. We've worked hard to get the 100' that the City Council finally passed. We're getting too much alcohol availability. Once it gets away from the stores and the parking lots, it spills into the streets, residential areas, etc.

Marvin Krout, Director of Planning, does not believe the explanation of the ordinance amendment regarding the parking adjacent to the building matches the language that is proposed. The staff did not interpret it the way that Seacrest has explained it to the Commission. This may need to be deferred.

Staff questions

Marvin inquired as to how the 150' is measured now if it is not perpendicular, as proposed. Rick Peo of City Law Department believes the term used now is "facing" rather than "perpendicular", and "facing" is not defined. He believes that "facing" is generally and broadly construed to mean basically in the same direction, so you wouldn't necessarily have to be totally perpendicular. It's more like a block frontage type facing. Marvin wondered whether "perpendicular" might allow games to be played with the front door in terms of the architectural design. Peo agreed that if "perpendicular" is based from the door versus the building frontage, you could probably change the direction slightly.

Bills-Strand pointed out that when the Commission voted to recommend denial of the original ordinance that was passed by the City Council, the existing grocery stores were never addressed. Would it be appropriate to add some grandfathering language to this proposal to address the existing conditions? Peo suggested that if the Commission wishes to add any provisions other than what is proposed, it would require readvertising. Currently, under the ordinance, if a liquor store was pre-existing prior to 1979, it would be considered a pre-existing use and allowed to continue. If it were pre-existing between 1979 and this date, it would become nonconforming and allowed to continue as is, but would require a special permit to rebuild in event of change. A change in terminology would require some readvertising.

Brian Will of Planning staff approached the Commission to request a two week deferral. The applicant's presentation describing to which areas the prohibition of parking and increased setback would apply is a different interpretation than that of staff. Staff interpreted the language to mean that parking would not be allowed in the entire side and rear yard as shown

on the exhibit. Will requested a two week deferral to meet with the applicant and address these interpretations.

Upon further discussion about attempts to address pre-existing conditions, staff suggested that it should be a separate application and reviewed on its own merits as it would most likely apply to more than the B-2 and B-5 districts. Carlson agreed. He believes it is a separate issue and he does not want to add that to this applicant's proposal.

Response by the Applicant

Seacrest attempted to explain the discrepancy between his interpretation and that of the staff. He drafted the language as pertaining to a building that contains a premise. When he answered the question indicating that certain parts would lose their parking and others would not, he was seeing it as two buildings. He interpreted that parking adjacent to the building with the liquor permit would have to be 50', but the other building that did not have liquor could be 20'. He believes that staff and the applicant have a contrary view. With one building there is usually one ownership. If it is two buildings and different ownership, it is not fair to have one business say they want liquor and force the parking measurements on the adjoining building. Seacrest indicated that he would agree to a delay, but he does not want to see it interpreted any other way. The parking adjacent to the licensed building would be 50'. If we had a pad site, the question then is, what is adjacent parking? He believes it would be a decision of the Building & Safety Department.

Carlson confirmed with Seacrest that his preference is the language as written in the proposal. Seacrest concurred.

Motion. Taylor moved to defer two weeks, seconded by Larson.

Pearson is not sure why we would want to wait for two weeks because she thought the applicant said that their proposal represents "perpendicular" and staff does not believe it should be "perpendicular". The applicant is clear on what he is requesting. The applicant is saying "perpendicular" to the front door. He does not disagree with that interpretation. Seacrest stated that perpendicular would be at right angle to the opening of the building. If you don't do perpendicular and if facing means something else, then it is the 180 degree rule. Remember, it is the impact of the noise coming out.

Carlson observed that the applicant's proposed parking language is more stringent than is currently required. Seacrest concurred.

Marvin stated that he will vote against the deferral. Sunderman also indicated that he is ready to vote today.

Pearson asked for staff clarification as to the different interpretations. Hill stated that the proposal is not making the parking more restrictive except around the back of the building. The staff has interpreted that the side yard would apply to the entire property as well as the rear yard. If you take the applicant's interpretation of "adjacent", you could have parking right up to the property line in part of the rear yard, and that is not more restrictive than it is today. Staff is suggesting that if you are allowed to park in the rear yard outside of the perpendicular part of the building, you could have people parking right next to the residential area. The staff needs two weeks to get this worked out. But, Pearson observed that the B-2 currently has a 20' side yard. Hill agreed, and you cannot park in that side yard. What is being proposed is not the same. There is a misunderstanding between the applicant and the staff as to where you can park in the side and rear yards.

Carlson noted that the ordinance requires that parking shall be in conformance with the parking section of the ordinance. The only difference is that if it is adjacent, the parking standard becomes more restrictive. He does not believe they are asking the parking standard to change except where it abuts the licensed premises, and in which case it would be more restrictive. So how are we lowering the threshold? Hill believes the proposal increases the threshold in two areas. If you allow people to park next to the residential area, you are not giving them any more protection than they have now.

Seacrest entered the discussion, suggesting that there is a lot of case law on "adjacent". Seacrest explained his interpretation at the map. The parking will probably be defined as "down the middle between the two buildings". He believes he is increasing the setbacks for parking with this proposal.

Peo stated that we do not define "adjacent", but we do define "abutting" as adjacent or contiguous. He believes the word "adjacent" means abutting and contiguous, so he would think that it has to run the length of the building itself and anything beyond the length of the building is no longer contiguous or abutting and therefore no longer adjacent. If you want to get the entire premises you are going to have to revise the language to change the word "adjacent" or else define it.

Motion to defer two weeks failed 1-7: Taylor voting 'yes'; Pearson, Carlson, Sunderman, Larson, Carroll, Marvin and Bills-Strand voting 'no'; Krieser absent.

Motion. Marvin moved approval, with the change regarding park land as recommended by staff, seconded by Larson.

Marvin believes the Commission is losing focus. This ordinance will apply to 5-acre to 30-acre tracts with really large buildings. Measuring from the front door on a 80,000 sq. ft. building and excluding the back loading dock as a point of entry makes sense. There is no comparison to a corner gas station selling alcohol. These distance setbacks need to be



treated differently because these are giant properties. To make the same measurement distances for these large buildings that you do for an old converted gas station selling alcohol doesn't make sense. This treats the two properties differently and recognizes that the stores are different.

Motion for approval, with the change recommended by staff regarding park land, carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin, and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**CHANGE OF ZONE NO. 04002**  
**FROM R-3 RESIDENTIAL TO**  
**B-2 PLANNED NEIGHBORHOOD BUSINESS DISTRICT,**  
**and**  
**SPECIAL PERMIT NO. 04004,**  
**AN AMENDMENT TO STONE BRIDGE CREEK**  
**COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT N. 14<sup>TH</sup> STREET AND ARBOR ROAD.**

**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Planning staff recommendation: Approval of the change of zone and conditional approval of the community unit plan.

Ex Parte Communications: None.

Proponents

**1. Jason Thiellen, Engineering Design Consultants,** testified on behalf of **Stone Bridge Creek, LLC**, the applicant. This amendment adds approximately 100 single family dwelling units with a change of zone to B-2. Thiellen agreed with the staff recommendation and conditions of approval, and stated that the developer has begun to make the changes as required by the conditions of approval.

Carlson confirmed that this change removes Outlots D and E from the existing community unit plan. Thiellen concurred. The outlots were pulled out of the community unit plan in order to include them in another preliminary plat that is in process. Those outlots will be dedicated as a neighborhood park in that associated plat once removed from the community unit plan. The wetlands are protected by the flood corridor.

There was no testimony in opposition.

**CHANGE OF ZONE NO. 04002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 31, 2004

Larson moved approval, seconded by Carlson and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin, and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 04004**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 31, 2004

Larson made a motion to approve the staff recommendation of conditional approval, seconded by Pearson and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin, and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**SPECIAL PERMIT NO. 04007**

**FOR A HEALTH CARE FACILITY**

**ON PROPERTY GENERALLY LOCATED**

**AT N. 26<sup>TH</sup> AND P STREETS.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Planning staff recommendation: Conditional approval, as revised on March 17, 2004.

Ex Parte Communications: None.

Greg Czaplewski of Planning staff submitted a letter in support from B&J Partnership, one of the owners of the property in question. Thus, the minority property owner has consented to this special permit. This was the only issue left to be resolved before action by the Planning Commission. It was clarified that the building will be oriented as submitted by the applicant.

Larson moved to approve the staff recommendation of conditional approval, as revised on March 17, 2004, seconded by Sunderman and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin, and Bills-Strand voting 'yes'; Krieser absent. This is final action, unless appealed to the City Council within 14 days of the action by the Planning Commission.

\*\*\* Break \*\*\*

Marvin Krout, the Director of Planning, provided information to the Commission on the Mayor's streamlining efforts, which he believed will be presented to the City Council at a precouncil meeting on Monday, March 5, 2004.

Stephen Henrichsen of Planning staff then did a presentation on "buildable lot supply" and presented a "residential land inventory review". There has been an increase in demand and we are at a period where we are looking ahead into the future at some "slimness" on the supply side. However, there is land available. The question becomes: How do we encourage some of the properties to be made available for development? It is anticipated that the streamlining efforts will assist in getting some of the plats through the pipeline faster than in the past – that doesn't put more lots on the market but it does make them more affordable. There have been several Comprehensive Plan Amendment requests to change the designated use or move land up in priority, and the staff is looking for opportunities to do that without a big impact on the CIP. The staff is also looking at the elements of the CIP to see if there are bottlenecks or things that can be modified in the CIP to help open up land sooner than programmed in the previous CIP.

Bills-Strand stressed that the demand is high, and in the real estate world, when 30 lots become available, they are gone in 72 hours. The buildable lots that are final platted with the infrastructure in place are low in numbers and she is convinced that we do have a problem. Hopefully, the streamlining activities can focus on this problem. The Angelou study says the city has become way too expensive for the incomes generated. Last fall we saw lots go up \$10,000 on average, and we are told they will go up another \$10,000 this next year. Supply and demand is the basic economic theory. The City Council has been able to lower the tax levy since 1994. 184 million dollars were spent by home builders generating sales tax – if that slows down we will not be able to keep the mill levy down. We need to address this issue and try to continue to increase the supply and get the infrastructure in.

Carlson suggested that rather than focusing on the number of lots, it might be helpful to find out about available units or houses for sale. While we do need to focus on new lots, we do have the public policy goal that we don't want to lose any housing. The tracking appears to end at the point of building permit. We need to know what housing is available within which to live. The even broader, more important public policy goal is what housing is available and whether people are able to buy a house. Henrichsen acknowledged that the inventory does not track apartment vacancies.

Larson commented that if the cost of lots is going up that fast, that also reflects on existing housing. Doesn't that also raise the cost of older homes? It is imperative that we somehow increase the supply. The reason we don't have a bigger supply is that we don't have the infrastructure. The infrastructure is important to the entire community and not just a benefit for

developers or home builders—it's a community issue. Henrichsen responded that to be the reason the administration has spent the last four years working on how we finance infrastructure improvements.

Marvin believes that part of the solution has to be in terms of the streamlining committee to convert lots that are not in the final platted state and try to get sewer and water to those particular areas.

Bills-Strand suggested that the Commission hold a future lunch meeting to continue discussion on this issue.

Pearson inquired as to why the multiple units are decreasing and the single family units are increasing. Henrichsen has heard in discussions with developers that it is the low interest rates that is increasing demand of people who are able to move out of apartments into single family units.

Pearson does not personally believe that there is a direct one-to-one correlation between cost of lots and available lots. It is a very complex issue. The cost of lots go up and they are not going to come back down. Anyone who thinks that adding 10,000 lots is going to bring the cost of lots down is living in a land that is not based on current economic thought. Bills-Strand agreed that it is a little more complex but we did see the price of lots go down in the 1980's.

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**COMPREHENSIVE PLAN AMENDMENT NO. 04017  
TO AMEND THE 2025 COMPREHENSIVE PLAN  
TO REPLACE AND UPDATE LANGUAGE RELATING  
TO FLOODPLAINS AND THE RECOMMENDATIONS OF  
THE MAYOR'S FLOODPLAIN TASK FORCE;**

**and**

**CHANGE OF ZONE NO. 04018,  
TEXT AMENDMENTS TO TITLE 27 OF THE LINCOLN  
MUNICIPAL CODE (ZONING ORDINANCE);**

**and**

**MISCELLANEOUS NO. 04001,  
TEXT AMENDMENTS TO TITLE 26 OF THE LINCOLN  
MUNICIPAL CODE (LAND SUBDIVISION ORDINANCE);**

**and**

**MISCELLANEOUS NO. 04002,  
TEXT AMENDMENTS TO THE CITY OF LINCOLN  
DESIGN STANDARDS AND THE DRAINAGE CRITERIA  
MANUAL**

**TO ADOPT FLOOD STANDARDS FOR  
NEW GROWTH AREAS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

March 31, 2004

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Planning staff recommendation: Approval.

Ex Parte Communications: None.

Mike DeKalb of Planning staff submitted three new items of communication in support, including an electronic mail message from Dave Lococo concerned about the South Beltway and that funding may not be available for purchase of easements, etc.

Proponents

**PRESENTATION BY THE APPLICANT:**

**1. Allan Abbott, Director of Public Works and Utilities,** began the applicant presentation, stating that the impact of development in the floodplain has been actively discussed in this community for at least the five years he has been with the city. In 2000, there was a group of citizens that proposed a moratorium on floodplain development. In 2001, the then Mayor

Wesely proposed an interim “no net rise” standard to address the risk of increased flooding. There was a great deal of discussion at that time that enough information was not available to implement those standards. The Mayor’s Floodplain Task Force was then formed, which worked for the next 18 months and developed guidelines, suggestions and ideas from which these proposed standards were developed. These proposed standards are the result of 18 months of work by the committee. The standards, as proposed, are the culmination of a great deal of work by everyone involved.

**2. Glenn Johnson, Lower Platte South NRD, provided background information:**

- # Mayor Wesely appointed a 16-member task force to formulate recommendations for development of floodplain standards to address the development of areas in the floodplain, while being sensitive to business, environmental and neighborhood interests and recognizing the need to sustain long term economic development opportunities. The schedule for these recommendations would have had them to the Planning Commission and City Council in late 2002, but it took longer to get through the process with a lot of public meetings. As part of the effort, the task force had two different technical studies done and also looked at some of the impacts from flooding.
- # The major adverse impacts of development in a floodplain (fill or construction of buildings) generally displaces flood water storage. That flood water has to go somewhere else. It also changes how the water flows through a floodplain when you have buildings or fill placed in that area. It increases the depth of flooding on existing structures within the floodplain; it can actually grow the floodplain outwards as the elevation of the floodprone area goes up and can bring in additional buildings that were not in the floodplain when it was originally mapped; it also has impacts on the velocity of water and on water quality and ends up creating problems for bank and channel stability. Johnson showed photographs of flooding impacts that have taken place around the city.
- # There were two different technical studies. One by the Army Corps of Engineers looking at Dead Man’s Run and Beal Slough; the other by CDM, which looked at different scenarios of what happens if you change from the existing floodplain ordinances to different kinds of floodplain ordinances and regulations. Some of these changes certainly were increasing the flood depths, the flooded area, and the flood elevations. The study looked at the impact of each one of those different scenarios.
- # The CDM study looked at the cost of changing the floodplain ordinance. Two different kinds of costs occur when you change the ordinance. One is in damages to public buildings and public facilities if you go to a more stringent standard than exists today. You actually reduce the potential damages on public facilities and existing private

facility with the no net rise/compensatory storage concept. The other cost researched was the change in cost for developing a piece of property. In most cases, it showed an increase in the cost of development, depending upon which type of changes in the ordinance were followed. No net rise compensatory storage was a significantly greater cost than one of the lesser changes in the ordinance. One other increased cost was in engineering to meet the more stringent standards.

**3. Nicole Fleck-Tooze of Public Works and Utilities** summarized the proposed standards. The major points in the proposal include:

- # Confirmation of the floodplain policy assumptions in the Comprehensive Plan.
- # Adopts standards that reflect the task force policy recommendations, the major policy being “no adverse impact”, which serves as a framework for all of the more detailed standards and regulations. “No adverse impact” is a policy goal to insure that action of one property owner does not adversely impact the flooding risk of another property owner.
- # There are five major points in the flood regulations and standards: 1) the new standards and regulations apply to the new growth areas which are outside the existing city limits and zoned AG or AGR; 2) the use of best available flood hazard; 3) “no net rise” standard, which essentially requires new development to show that it is not creating a rise in flood heights on other properties; 4) compensatory storage standards so that flood storage lost to fill or structures is compensated for by providing replacement storage at 1-to-1 ratio; and 5) extends requirement for preservation of buffer called “Minimum Flood Corridor” to stream channels with mapped floodplains.
- # With regard to public process—there was a task force that began in 2001; recommendation was issued in April 2003; the proposed standards have been available since early February; open house was held on March 9, 2004; presentations have been made to Mayor’s Neighborhood Roundtable and various interest groups.

### **PUBLIC TESTIMONY:**

**1. Doug Rotthaus**, 8231 Beechwood Drive, testified on behalf of the **Realtors Association of Lincoln (RAL)**, which includes 840 real estate professionals:

- # RAL supports the goal of the proposed standards. The protection of the environment and existing homes and businesses from future flooding are important goals.

- # Realtors fully understand what it means to an individual property owner to find their home or business located in a floodplain. Flood insurance is very expensive and negatively impacts the marketability of a property and reduces the overall value of a property.
- # RAL is concerned about the lack of flexibility in the proposed standards. Flexibility should not be interpreted as allowing development that has negative flood impact. Flexibility should also not mean elimination of green space or deterioration of the environment. Flexibility means that there will be certain cases where there will be more cost efficient means of achieving the goals of flood protection. Higher development costs translate into unnecessary housing cost increases. If the environment can be protected and property owners downstream are protected, it is ill-advised to pass along unnecessary costs. RAL opposes unnecessary increases in housing costs, and that is what RAL is really concerned about. They are fearful that the rigid standards being proposed are going to be some unnecessary costs to be borne by the consumer.
- # The no adverse impact standard is inflexible and economic factors need to be taken into consideration. Zero tolerance to this standard is not economically viable in certain cases. The increased development costs add to an already long list of costly requirements to developing land in Lincoln. These costs get passed along to the home buyers. As it sits today, it is uncertain how many otherwise developable acres are impacted and exactly what the net economic effect will be.
- # This proposal needs a reasonable common sense standard for granting relief--one that protects the environment and does not increase downstream flooding, and one that allows for good development to move forward. We need to use land wisely, but also efficiently.
- # If the standards are approved as drafted, they will reduce the land's development potential in certain cases without a corresponding benefit to the community--it unnecessarily raises the prices. RAL feels strongly that the costs involved need to be balanced with the benefits. In a worst case scenario, under an overly rigid standard, a large number of individuals would live outside the community to achieve affordability but not pay city taxes. The proposal needs to be amended to allow for more common sense flexibility based on a standard of flood control and environmental protection and needs to allow for maximum use of the land.

Pearson inquired whether Rotthaus is suggesting that RAL only supports environmental initiatives if they don't directly increase the cost of the land to the home buyer. Rotthaus responded, "no". He further responded that rigid standards that unnecessarily raise the cost of development are not acceptable. If the development protects against downstream flooding



and protects the environment, then it should be approved. The proposed standards are quite rigid and do not allow for that flexibility.

Pearson inquired how to prevent downstream flooding without no net rise. Rotthaus believes that the development should be judged on its ability to not increase the risk of flooding downstream. Pearson asked whether there are other means besides no net rise. Rotthaus believes the no adverse impact policy is much more rigid and there are some corridor design standards and other elements of the proposal that are quite inflexible. The RAL believes that in some cases you will find better ways to mitigate the issues of flood control and environmental protection that allow for some flexibility. We don't want to see large parcels of otherwise developable land being not put to use or being eliminated as development potential. It is important to develop as many parcels within that land designated as possible.

## **2. Clay Smith, 2310 Woodsdale Blvd.**

- # Served for 20 months on the task force. Complimented the city staff and Glenn Johnson for their efforts, the resources they brought to the committee and the attention of detail that they provided.
- # Often this issue of floodplain management comes down to those that may not understand all of the delicate issues. We have a floodplain system in our community that was evolving over time and the management along South Salt Creek as it was designed proved inadequate to protect us as it was designed to do. Many of the property owners and home owners that have property in the floodplain were not in the floodplain years ago. The challenge that we have is to try to figure out how to effect a positive change going forward without impacting property rights for those that now find themselves in the floodplain when they were not previously.
- # Concerned about additions onto existing structures – lateral additions. We need to differentiate between improvements to buildings and lateral improvements to buildings. Encouraged the Commission to work with staff to delineate those improvements to existing structures without changing the footprint from those that are lateral improvements. We need to be careful with lateral improvements. Not all of the task force members agreed to abide by the no net rise/compensatory storage regulations for those lateral improvements. Encouraged the Commission to eliminate the compensatory storage for lateral additions.
- # Public stream crossings and structures should be exempt. He understood the logic when this was presented to the task force, but it creates an inequity in the public field versus the private field. When you look at the flows in most of the stream corridors, the bridges are the biggest constraints for flood. By exempting those, they can do more damage than any of the good caused by the rest of the ordinance. Encouraged the

Commission to work with staff to end up with “something that protects us and does not exempt classes that might hurt us”.

- # Disagrees with the 2-year expiration on fill permits. If you have a fill permit and you don't exercise it within two years, you will lose it. The application and re-application process are long, so it increases the time required for a business to do its work. Speedway Motors has a 7-acre building with the capability to add 7 more acres of building but it would require filling the floodplain. Speedway Motors has a permit to do that but he does not want to fill the floodplain today because he may not need that building. Under the proposed ordinance, he would have to spend money today that has no benefit.
- # With regard to pre-existing uses, Smith believes a property owner should be able to make improvements to the property so that it remains viable and useful if it is not changing the footprint.

Marvin commented that there are a lot of people that move from a smaller house to larger house because it will not be viable to expand and add on to their home. At some point, a business can outgrow its own footprint. Smith's response was that Speedway Motors has enough land to grow on, but they will be restricted because of the floodplain ordinance.

**3. Bruce Bohrer**, testified on behalf of the **Lincoln Chamber of Commerce**, and agreed with the previous testimony. He also served on the task force.

- # Believes there are some valid concerns about flood protection, conservation, water quality, and green space. But there needs to be flexibility and balance.
- # The Chamber was involved in this effort from the very beginning and will continue to be involved.
- # There is not really a no net rise standard in this proposal—not a uniform standard. He does not know that we will ever find a way to prevent downstream flooding.
- # Encouraged the Commission to take a little more effort to look at more flexibility.

Marvin inquired whether the Chamber would support a no net rise standard for bridges. Bohrer believes it is a valid exemption, but if you are really trying to eliminate downstream flooding, you would have to have it apply to every structure that is in the way of the flood. This no net rise standard is not going to prevent downstream flooding because there must be reasonable exemptions and exclusions. His point is that there may be other ways to apply the flexibility.

**4. Bill Newstrom, 8231 Beechwood Drive, current President of the Realtors Association of Lincoln, which represents over 1,000 members, including 840 real estate professionals.**

- # The average new home (single family detached) sold for a little over \$194,000 in 2003. New home prices are going up too fast. Expects market place will hit \$250,000 in a short time. When comparing Lincoln to other cities, we are quickly becoming less affordable than many other cities our size. Last May, he attended a breakfast at the Cornhusker Hotel. Angelou told everyone in attendance that Lincoln's real estate prices were too high due to constriction of supply of available land. Pointed out that any use of land that is less efficient and does not yield the necessary supply of buildable lots will increase the problem of high prices of housing. The proposal has an applied assumption that the community will begin living differently – more densely – than they do today. The proposal is to be density neutral and overall density is said to be no different. What needs to be highlighted is that in order to remain density neutral, the housing styles would need to change dramatically to more cluster development. The RAL is concerned about that assumption. He specializes in townhome sales and not everyone wants to live in a townhome or a condo. Rarely do home buyers request smaller yards or more dense living areas. As a result of the proposed standards, traditional style housing may become more expensive than it needs to be and will consume more land than it needs to unless there is some flexibility built into this proposal.
- # RAL supports the protection of the environment and flood protection for everyone downstream.
- # We need to streamline the development process and need to maximize the use of the land and create enough residential housing to relieve the constriction of supply.

Pearson inquired as to who paid for the Angelou study. Mary Bills-Strand believes it was the Lincoln Partnership for Economic Development.

Marvin pointed out that the Planning Department report shows a grand total of potential lots at 52,720 – what percentage of those would be adversely impacted by the proposed standards? Newstrom did not consult with their consultant prior to this meeting and offered to provide the answer to this question in writing.

**5. Kent Thompson, 2930 Ridge Line Road, #105:**

- # served on the task force, where there was a lot of conversation and a lot of disagreement. The outcome of those meetings produced this result, but a lot of the members did not agree with those results. The response by Seng and Newman at that

time was that we need to make these standards so high because they are going to get so watered down.

- # He believes the threshold is way too high. The costs to extend utilities for both city and private suppliers into these sections are extremely high. The cost to build the roadways is going to increase dramatically for the city, the state and the developers.
- # The stream bed standards are excessive and unnecessary in terms of the costs they are going to give to homeowners and homeowner associations in the future, and will take away an unnecessary volume of land.
- # The proposed water retention ponds could eventually hold back enough water if increased by 1.12 to 1.17 percent than current standard.
- # The task force never came to an agreement on cost/benefit. The Commission needs to look at the cost/benefit aspect.

**6. Monty Fredrickson, Deputy Director for Engineering, Nebraska Department of Roads (NDOR):**

- # Supports the concept of floodplain management.
- # Worked with Public Works staff over the past several months as the standards were drafted. Public Works sought technical input from NDOR and NRD regarding details of stream crossings as they relate to the proposed standards to adopt a practical standard and provide flexibility for these crossings, whether public or private. The refinement has resulted in standards that are in the public interest.
- # Submitted proposed alternate language for Article 10.4.3 of the Drainage Criteria Manual regarding mitigation for stream crossings. NDOR believes that restricting the affected portion of a property to future development is too severe. It is NDOR's understanding that FEMA will not process a map revision for less than a one foot rise. Offered new language for this section to satisfy the intent of the regulations regarding mitigation (Exhibit #1, attached hereto and made a part hereof by reference).

Bills-Strand referred to the communication from Dave Lococo relating to the South Beltway and 27<sup>th</sup> Street extension, which suggests that even if funds were available, FEMA will not allow purchase of easements within the Beltway and the state will not allow any activity within the limits of construction. Bills-Strand asked Fredrickson whether he had an opinion as to how this language affects the South Beltway, etc. Fredrickson stated that NDOR has worked with the city/county on conservation easements in the area of 27<sup>th</sup> and the South Beltway and they

have worked out co-existence. NDOR is looking to protect the footprint for the South Beltway, and that is it.

Marvin inquired whether the proposed standards will significantly raise the cost of the South Beltway. Fredrickson stated that they would not raise the cost of the South Beltway as far as projects in the pipeline. Once you get so far into a project it is difficult and costly to back up. We have the final environmental impact statement and have been through all of the resource agencies for the South Beltway so it can proceed under the current standards, which is a 1' rise. However, there will be some cost increase in the engineering if these standards are adopted. NDOR still does an analysis on every floodplain to make sure the FEMA requirements are met. Then we look for the most practical and feasible approach. We may have to look at a couple more alternatives now with the sequencing approach.

Carlson asked Fredrickson to explain why the NDOR alternate language is better. Fredrickson explained that the proposal talks about mitigation including purchasing the rights for future development. The NDOR believes it is going to be very expensive and it is a restriction on that property. NDOR believes that the mitigation of "purchasing the flood easement" is sufficient. Then that puts the owner and the city on notice that there has been a change in the floodplain, and then that owner can deal with it. We understand that FEMA will not process a map revision for less than a 1' rise. We substituted the fact that the NDOR must do a detailed hydrology study and the NDOR would submit all that data in a concise report and detail the effect of any rise. That report could be on record with the city.

**7. Phyllis Hergenrader, 5701 Yankee Hill Road, testified on behalf of the Lower Platte South NRD Board in support.**

- # When considering the consequences of development in the floodplain, human beings--not nature--are the cause of flooding disaster losses which come from choices of where and how growth and development will proceed. Flash floods cause more human deaths than tornados and hurricanes combined. Floodplains reduce the magnitude of floods and provide storage areas for water during storm events. Floodplains enhance water quality and provide aesthetic natural areas, wildlife habitat and natural recreational opportunities. Human intervention in the channel and floodplain by placement of fill or structures displaces flood water storage and changes the flow characteristics, causing the floodplain to expand and cause stream channel erosion.
- # Preservation of the 100-year floodplain or floodprone area meets the goals of the NRD for flood control, soil and water conservation, and preservation of wildlife habitat.
- # The NRD Board strongly supports the no adverse impact principle in the proposed regulations. No adverse impact is a do no harm policy that promotes responsible floodplain management with the goal of insuring that actions of one property owner do

not increase the risk for other properties.

- # The members of the Board urge the Commission to recommend adoption of the flood standards for new growth areas to protect human life, health and property and reduce public expenditures for costly flood projects and recovery from damages.

Pearson asked Hergenrader what she would say to the business community when they say this increases the cost of development of land. Hergenrader agreed that at the time development is taking place it probably does increase the cost, but if we consider the long term possible impacts or effects if there is a net rise and it causes flooding damage downstream and the costs of taking care of that problem at a later time, the net cost in the end will probably be more if the development is allowed to proceed than to prevent it in the first place.

**8. Mike Morosin, 2055 S Street, past president of Malone Neighborhood Association:**

- # Why are efforts not being made to hold back the soil that is going to filter down into Holmes Lake Dam? The citizens are now required to help pay for taking all of the silt out that would not have been in there if government would have forced the builders, developers and others to do the mitigation needed to keep that out of the lake. They don't care about the people downstream because the people in the older neighborhoods downstream receive the water because mitigation has not been done.
- # When the Antelope Valley conduit box was repaired, they put so much concrete in that it decreased the flow by 33% which created a wider floodplain. They could have used other technology that would not have reduced that flow.
- # These flood standards are needed and have been needed for a very long time. Older neighborhoods will still be impacted by the growth because you cannot build your way out of congestion.

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**9. Lynn Darling, 2601 S.W. 23<sup>rd</sup>:**

- # Requested that important public hearings such as this be scheduled in the evening.
- # She experienced the floods ever since the rain started after the drought, especially the 1951 flood. The proposed ordinance is long overdue. This is an excellent ordinance. Yes, it will cost more money, but nothing compared to the cost that it will create if this ordinance is not passed in totality. Other cities move their towns out of the way of

flood's harm way. Water goes anyplace it pleases. Even after all of these studies and planning, there will be surprises on the next flood. Safety, livability, land and water are all respected in this ordinance. We all need to have respect for water. Do not change this ordinance. If you do, you are telling the citizens that they don't know what they are doing. You are telling the taxpayers that they have no voice.

# Flexibility usually means eroding. Do not give in to greed and ignorance.

# In 1976, President Carter passed a bill that says all public buildings are required to have a plaque that states the year of the flood and the depth of the water. We need several of these around town like Gooch's Mill, the Great Hall in Haymarket, etc.

**10. Marjorie Allen**, 1700 J Street, testified in support and related her unfortunate experience during the 1950 flood, at which time she lived at 220 West South Street, on four acres, without a radio or phone. A lot of this flooding happened because of the new development in the south part of Lincoln. We need laws that will prevent this from ever happening again.

**11. Ginny Wright**, member of the **Eastridge Neighborhood Association**, testified on behalf of the **Lincoln Neighborhood Alliance** (Exhibit #2, pages 1, 2 and 3, attached hereto and made a part hereof by this reference).

# The Neighborhood Alliance "Plan for Action" includes floodplain and wastewater as one of the 12 significant issues that 21 neighborhood associations support.

# The Lincoln Neighborhood Alliance is in favor of the no adverse impact, no net rise, compensatory storage ordinance.

# During the 1950 flood, Lincoln only received 1.17 inches of rain. We need to establish stormwater control as far out as we can.

# It is not possible to find cheap fixes. The better cost effective route is to prevent problems from occurring in the first place. If these standards had been in effect in 1985, all of the investments in housing, business and thoroughfares would have been in far less danger of flooding. We need to learn from past mistakes. Lincoln should not allow another Beal Slough situation to develop.

# The Lincoln Neighborhood Alliance strongly encourages implementing the flood standards for new growth area.

**12. Russell Miller**, 341 S. 52<sup>nd</sup> Street, testified in support (Exhibit #3 attached hereto and made a part hereof by this reference).

- # Bad business policy permits unregulated development without regard to the consequences to the businesses downstream.
- # If no adverse impact, no net rise and compensatory storage had been practiced in the 1960's, today's Lincoln would not be in the floodplain and we would not have wasted all of the money spent on levees and dams.
- # The standards should be made retroactive to January 1, 2004.

Pearson asked Miller for his opinion as to the additional cost to develop property with the new standards. Miller indicated that the property he owns is valued at \$70,000 and the flood insurance is \$620 a year. Yes, somebody is going to have to pay more money to keep the flood height from getting higher so that his flood insurance does not go higher.

**13. Rick Krueger**, 2929 Pine Lake Road, focused his testimony on the CDM study.

- # The increased costs to private development were projected at 14% for residential, 21% for commercial and 10% for industrial development.
- # They took a 58 acre parcel and overlayed a subdivision on it with 177 total single family dwelling units (3.1 dwelling units per acre). Under the proposed standards, the density drops to 124 dwelling units (2.1 dwelling units per acre).
- # The study basically says that the standards will increase residential costs 14%, although he thinks it might be more than that based on the drawings.
- # This is a discretionary policy—he does not believe it is required.
- # Disagreed with using the Dead Man's Run model as a comparison to the new growth areas. If we are going to make policy, we need to do a better job of analysis.

**14. Glenn Ceval**, 1420 C Street, testified in support and gave testimony of his experience in the 1951 flood.

**15. Wilbur Dasenbrock**, 1449 Meadow Dale Drive, **Urban Committee Chair for the Lower Platte South NRD Board**, testified in support. It is a wise investment for our community and for our city. We can easily work out the bugs of the system and still be fair to our community and the others that have interests in making a living here.

**16. Marilyn McNabb**, 1701 W. Rose Street, testified in support, and submitted Exhibit #4 (attached hereto and made a part hereof by this reference).



- # Served on the task force. There was a remarkable degree of agreement in the group that they worked hard to get.
- # Acknowledged that the task force did not look at a particular cost/benefit ratio but tried to compare different kinds of costs and benefits, and they were always looking at tradeoffs.
- # She referred to the attendance record of the task force members. They did reach very large consensus on the policies for the new growth areas. The proposed standards are congruent with those proposed by the Association of State Floodplain Managers.
- # Requested that the Commission adopt the standards as proposed. "Things will not get better, but things will not get worse."

Bills-Strand advised that on real estate transactions, the State of Nebraska has passed a sellers disclosure that is required on any property sold. It asks if the real property is in the floodplain or floodway. This question must be answered and is required on every real estate transaction.

**17. Foster Collins, 2100 Calvert, testified in support:**

- # Served on the task force as representative of the Mayor's Environmental Advisory Committee.
- # The Comprehensive Plan states that Lincoln does intend to preserve the floodplain and stream corridors as both flood protection and open space. The stormwater ordinance preserves the floodplain and the smaller tributary streams. This is the next piece of flood control and he urged that it be adopted.
- # No adverse impact is a good succinct way to express the intent of the task force. No net rise and compensatory storage are the best ways to insure no adverse impact.
- # Disagrees that this will increase sprawl.
- # The cost to adjacent landowners who would be brought into expanded floodplain must also be considered.

**18. Kent Seacrest** testified on behalf of **Ridge Development Company and Southview, Inc.**, in support of the proposed ordinance, including the no net rise, no adverse impact, compensatory storage and "almost all" of the minimum flood corridor.

- # His clients developed Horizon Business Center at 14<sup>th</sup> and Pine Lake and they tried to do many of these things down there next to Wilderness Park.
- # Lot values are higher near green spaces.
- # The first set of goals are quantity – get the water through development safely.
- # Concerned about the minimum flood corridor, which already applies today in what he calls the “middle stretch” of the creek. And then there is the last 150 acres (the top of the hills area). This proposed ordinance proposes the minimum flood corridor in the last top of the hill stretch and Seacrest explained why he does not believe this is necessary. This ordinance uses the term “definable bank and bed”. You would have a 66' wide easement to protect that little top of the hill “creek”. You are now protecting land that he would call “dry” that is not within the 100 year water area. This requirement is overreaching. Today’s law requires us to get the 100 year water through the subdivision safely. It is not a matter of flooding anyone, so we already have the 100 year water protection. The Corps already regulates these waters through a 404 permit. If we move a creek we need a 404. If we fill a creek we need a 404. We have to avoid, minimize and then mitigate. Why would you have us go through two processes? It’s already regulated. Seacrest requested that the Commission not require the minimum flood corridor at the top of the hill because it is already regulated by the Army Corps of Engineers.

**19. Tim Knott**, 4310 Waterbury Lane, testified on behalf of the **Wachiska Audubon Society** in support (Exhibit #5, attached hereto and made a part hereof by this reference).

**20. Danny Walker**, 427 E Street, testified in support (Exhibit #6, attached hereto and made a part hereof by this reference). He has lived in the floodplains in this city for approximately 50 years, and is currently President of the South Salt Creek Community Organization, representing over 1100 actual residential properties located in the middle of the floodplain of Salt Creek.

**21. Roxanne Smith**, 711 Peach Street, testified in support of the standards to insure that the city of Lincoln follows the national lead in working to keep people out of floodplains. There are physical and social health benefits, and taxpayers will save money.

**22. Terrence Kubicek**, 1800 S. 53<sup>rd</sup> Street, at large representative of the **Lower Platte South NRD Board**, testified in support; however, he stated that his comments are not sanctioned by the full board:

- # Served as Deputy Director of Natural Resources Commission and has been directly involved in soil water conservation for over 50 years.

- # Urged the Commission to adopt these standards as a reasonable balance between a safety standard protecting the public and a development standard for the developers.
- # These standards also are a springboard for an emerging national standard of no adverse impact. This city needs to set a new vision. In terms of environmentally sensitive development, these standards provide a springboard for that kind of initiative.
- # These standards outside of the urbanized core help provide the opportunity as a city to do it right. He urged the Commission to adopt the standards and to enforce them.
- # There is a need for a wider corridor in upstream areas because you have bank and bed instability and the catchment in those areas has a significant compounding effect downstream. Hard surfacing in an urbanizing environment, eventually to become commercial or industrial, does have a compounding impact over time. These standards give us an opportunity to get ahead of the development and provide for public safety at a minimum cost.

**23. Ed Patterson**, 2108 Q Street, testified on behalf of the **Malone Neighborhood** in support.

- # The levee on the north side of Salt Creek is 1151 feet above sea level. The grates on the north side of Nebraska Hall are in that building and the transformers are in the basement. You flood the basement, the campus shuts down. You top the levees on Salt Creek as currently defined, you shut down the UNL campus. If the levees had been built to 1155 above sea level, then the door on the north end of Mabel Lee Hall will be flooded. There are a number of steam tunnels that fill up in the 1151 level, including the steam tunnel that feeds the new Beadle Center. It has already had to be pumped out once. We already have big problems when we get close to the top of the current levees. If the network control center for LES floods, the cables that control the computer terminals are in the floor of that building.

**24. Ken Reitan**, 2310 S. Canterbury Lane, **Board member of Lower Platte South NRD**, testified in support. The NRD is a co-sponsor of these standards and he personally supports the proposal. Also read statement written by **Rusty Banks**, a board member of the **Friends of Wilderness Park**, in support (Exhibit #7, attached hereto and made a part hereof by this reference).

**25. Peter Katt**, 1045 Lincoln Mall, Suite 200, stated he was testifying in his own capacity. He stated that his firm represents a number of land developers in the community and he brings a lot of experience in terms of what it takes to develop land in this community.

# Need to look at the bigger picture. A key component is affordable housing. He does not believe that anyone has said that this change comes without a cost. There is a wide variety of what it will cost, but undoubtedly it will add a cost to developing and building homes in Lincoln, and it is a cost that other communities do not face.

# There is a range of alternatives available to regulate stormwater runoff and flood control. The federal regulations currently represent the minimal level necessary and Lincoln already exceeds that standard. The standard in terms of elevating where we are today to some higher standard is what we should be looking at. That is the cost/benefit that needs to be addressed and which has not been done. The proposed standards exceed state and federal regulations. It imposes no net rise to both floodplain and floodprone areas and would require a sequencing regiment. The risk to our community in imposing a higher level of standards that are not imposed uniformly in other places is that at some point homes will become unaffordable and people will need to look outside of our community for places where they can afford to live.

# The question is, what type of community do we want to have? We can impose the highest standard possible and there will only be a very few of us who can afford to live in the community. As you consider adopting this significant change, ask yourself about the cost to the community and the consequences of increasing the cost of new development. Who will have the ability to live in these new neighborhoods?

**26. Steve Larrick**, 920 S. 8<sup>th</sup>, testified in support. What would happen if we don't adopt these standards? There are already affordable houses in the South Salt Creek neighborhood. There are over 400 homes in a historic district. This is one of the key areas that will be flooded unless we do a better job of protecting our older neighborhoods. He supports the proposal and the work of the task force should be respected.

**27. Mary Roseberry Brown**, 1423 F Street, President of **Friends of Wilderness Park**, testified in support of the proposed flood standards and in support of bringing forward phase two of the standards for the areas within the city limits as quickly as possible.

# She has been told by floodplain engineers that the most effective place to control flooding is in the uplands because the water is very small in density and it is very easy to hold it there -- the further down you go, it gains in velocity and volume and picks up sediment. Recommends this be kept in the ordinance.

- # The Task Force was a very diverse group of people. They studied the expertise of these floodplain managers very carefully for 18 months. If they could come to a consensus on these issues, she does not think they should be dissected because no one here except the task force and the Public Works staff has put that much into it. The special interest groups wanting changes without that expertise doesn't seem reasonable.
- # The Army Corps of Engineers does regulate applications for bed and bank fill and wetland fill; however, in 2001, a National Research Council study found that the Corps rarely does compliance study and follow-up. With the budget cutbacks, they are even less able to inspect. They very rarely follow-up on compliance unless there is a complaint because of budget cutbacks. In 1978, Lincoln took major steps toward this by the establishment of Wilderness Park for the provision of holding and absorbing water. But now as development has progressed outward, this ordinance would fall along the same philosophy of providing protection to the creeks to hold the water back.
- # Community liability is another point to be made because increasingly the courts have found communities liable when there is adverse impact on any property owner. Lincoln indeed could be liable if they do not adopt this ordinance.
- # Regulation of the floodplain is not a new or unanticipated idea in Lincoln and has been discussed in the Comprehensive Plan for many years.
- # We should not quibble about how much these standards might increase the cost of building a house when you consider the millions and millions of dollars that flood damage could cause compared to what it would cost to build a house.
- # As far as affordable housing, most Lincoln developers choose not to build lower cost housing. She does not believe most developers even think about affordable housing when they are building houses.

\*\*\*\* Break \*\*\*\*

Response by the Applicant

Glenn Johnson addressed the question raised about where Lincoln falls in terms of its current floodplain standards and whether Lincoln far exceeds the standards or whether it is already at some other level. Lincoln's standards today are greater than the national standards, but equal to the state standards, which are the minimum in Nebraska, so they are not currently any higher than they have to be for Lincoln to be in compliance with the State Flood Insurance Program.

As part of this study, a number of other communities were researched and there is a number of communities, some in the Midwest, that have significantly higher standards than the minimum requirements. The trend today is to exceed the state and federal standards.

In response to the question about the stream crossings and bridges exemption, Johnson suggested that there may have been a misunderstanding as to public versus private structures. All structures, public and private, are treated the same except for those public structures (and only those public structures) where they have gone through an environmental impact statement and those types of issues have already been addressed in the environmental impact statement. All of the rest of the public bridges that would be built with city/county/public funds and private bridges are all done the same way. They do not have to mitigate for the loss of storage. They don't have to provide some of the vegetation mitigation. The public and private bridges are all being treated the same. Those public bridges like South Beltway go through a whole different process, but it achieves the same goal.

With regard to the substantial improvements and eliminating the restriction on improvements to existing structures that are not changing their footprint, Johnson explained that the lateral additions apply only to non-residential structures. The substantial improvement issue is not being changed here. It is an issue that is part of meeting the minimum standards in the floodplain program. It is a FEMA requirement—not a city requirement. Those standards now apply in the mapped floodplain areas – that lateral addition and the substantial improvement would be included in the floodprone areas that are identified that are beyond the mapped FEMA floodplain. Those structures in that floodprone area would be subject to the current standards and the lateral addition. Carlson suggested that this is notice for a future building more than existing.

Nicole Fleck-Tooze responded to the amendment requested by NDOR regarding the mitigation section of the Drainage Criteria Manual. She has visited with NDOR and the staff is absolutely fine with their amendment in concept, but there needs to be some clarification in the amended language. If the Commission wishes to make this amendment, Fleck-Tooze requested that the amendment be such that the language be clarified to the satisfaction of the City, NRD and NDOR prior to City Council action.

Fleck-Tooze then addressed the objection to the fill permit expiration date, which is a new regulation. The concern is that without a permit expiration date, we may have a rush of people moving forward to get a fill permit when the new standards are adopted. As proposed, anyone with a fill permit now would have 2 years from the date of adoption of the ordinance before their fill permit would expire.

With regard to the economic study referred to by Mr. Krueger, Fleck-Tooze explained that the task force really shaped the scope of that economic study done by CDM, and when the study was completed in November of 2002, none of the task force members identified any deficiencies in the study or that further study was needed. We also had the Corps of

Engineers study which had an economic component and information from many other different sources nationwide was also considered.

With regard to costs, Fleck-Tooze stated that damages are projected in the millions of dollars only if we see a one foot rise of flood heights. With some of the more sophisticated modeling, we are consistently seeing much greater than one foot of rise. The Corps saw up to 2.8' of rise on Dead Man's run; we saw up to 4.3' on Beal Slough and 4' for Southeast Upper Salt Creek.

Further, with regard to damage costs, there are damage factors utilized that come straight from the Federal Insurance Administration. A single story home with a basement is considered to be worth \$100,000. If you have two feet of rise in flood height, there is \$31,000 damage to the structure and \$29,000 estimated damage to the contents.

In regard to taking away developable acres and increasing the cost of housing, Fleck-Tooze explained that one of the reasons this is coming forward is because there are very different circumstances in our existing urban area. The question about cost is an important one because these standards will have some impact on the cost to develop in the floodplain. But, whether these standards are adopted or not, there is a cost to development in the floodplain. The question is, who should bear that cost? The standards recommended by the task force support a no adverse impact approach where each property owner who chooses to develop in the floodplain is responsible for making sure development does not increase flood hazards for others.

Larson questioned the responsible party issue. Fleck-Tooze stated that one of the challenges we face is that it is difficult to determine who caused the damage. It is a cumulative impact. As far as whether the city could be found liable, Pearson does not believe there is any legal recourse against a building official.

Pearson referred to the CDM study. She believes that our numbers are misleading and she would like to see them clarified. Mr. Krueger said increased costs to private development are projected at 14%, 21% and 10%. The question is, 14% of what? Is that the civil site development or the total project cost? She was told that it was just the site development cost. So we're actually only talking about 1 or 2 or 3 percent. She would like to get that clarified. Fleck-Tooze referred to her written response to Doug Rotthaus dated March 26, 2004. Pearson thinks that would be important information to get to the Council. Larson noted, however, that Krueger said that as a general rule the improvement costs are 4 times the cost of the lot.

Bills-Strand believes that the 60' wide corridor is eliminating some lots so that also increases costs because you just removed some land that could not have been developed. You've also

got impact fees and other costs. Somewhere there is going to be another package to fund going out and buying this land so that existing owners don't allege a taking. There are a lot of packages – not just this one – to the cost of developing raw land and you need to consider all of those components to determine economic costs – not just one.

Marvin inquired whether the staff would be going out to classify the 1' ditches as minimum flood corridors. Fleck-Tooze advised that today, we have a standard for minimum corridor which applies along our smaller streams, which do not have mapped floodplains, up to the point where that stream is draining 150 acres. When it drains less than that, that is the point at which that requirement ends today (the middle stretch); the task force recommended two different things: 1) that the minimum flood corridor be extended into the mapped floodplain; and 2) that this minimum flood corridor would apply to the top end upstream of the 150 acre threshold. The task force was trying to make sure that there was some preservation of the smaller defined streams that provide that sort of natural sponge and buffer. The intent was to protect those stream areas. There is a big difference between applying it on the downstream and on the upstream end.

Fleck-Tooze also advised that the proposed standards would go above the Army Corps of Engineer standards and would be more restrictive. Typically, the Corps asks for local jurisdiction comments as they issue permits, so that is a way to make sure those are coordinated.

Bills-Strand returned to the upstream issue, wondering whether the corridor could be narrowed down. Fleck-Tooze agreed that would be one option if there is a lot of concern about the width. The base width is 60', but there is some modification to the size of the buffer based on the stream depth and stream width. Larson also believes there should be some other options available other than that 60' width.

Taylor inquired as to which system is more protective than the other. Fleck-Tooze believes that what is proposed is probably more restrictive than the Corps of Engineers. Johnson added that the Corps system only comes into play if you are going to modify the channel by filling, dredging, replacing fill or enlarging it or moving the channel. Then the 404 permit is required. If you are simply staying away 30' on either side or 20' on either side and you are not impacting the channel, the 404 permit does not come into play. The formula being used here for our minimum flood corridor came from the Corps and that is what the Corps imposes if you are going to get a 404 permit and you do intend to do a channel modification in that upper reach.

Carlson commented that the flexibility occurs because you have site by site professional engineering determining where it is necessary and where it is not necessary.



Sunderman wondered whether the no net rise portion of this legislation would handle the corridor itself. If the corridor is not necessary to meet the no net rise, can you mitigate around it? Fleck-Tooze stated that the no net rise is strictly looking at conveying water along the channel, although the buffer is acting as the natural sponge, stabilizing stream banks, etc. The three major functions of our floodplain that we are trying to protect are flood conveyance (no net rise), flood storage (compensatory storage) and the natural sponge quality of that buffer. You could preserve flood storage and flood conveyance and lose all of the water filtering properties that you have in a natural buffer--you could lose your riparian habitat, etc. The three of those actually really work together and reinforce each other.

Pearson noted that Speedway Motors and Lincoln Plating referred to by Clay Smith are not in the area being discussed. Fleck-Tooze clarified that they are in the existing urban area and they would not be covered by the standards for the new growth areas except for the expiration of the fill permit and the information required on a fill permit.

Carroll inquired as to what percent of the land in the new growth areas will be in the floodplain. Fleck-Tooze stated that all of the areas that are within the floodplain have a land use designation that is not for a future urban use, and we certainly have portions we have identified through the NRD for purchase. It is a fairly small percentage of the overall growth area. The percentage in the floodplain adjacent to residential is about 2.5%. She believes there would be 12.8% in the floodplain within Tier I. That would be in addition to areas that were designated for future growth.

Carroll noted that the new mapping will recognize more floodplain in some places and less in others. If there is a discrepancy, will the FEMA maps be updated? Fleck-Tooze indicated that to be the case. The staff is involved in a streamlining process with FEMA to this effect.

Carlson noted that we specifically tried to identify land for growth that was outside the floodplain in the Comprehensive Plan. Beyond that, if it is identified in the Comprehensive Plan and you choose to build there, there will be additional costs. Fleck-Tooze also suggested that the floodplain areas can be part of the open space for development, the dedicated park land, recessed parking that is also serving as flood storage, trail components, park components, etc. Carlson also suggested that the floodplain could be used as an individual lot and individual yard and calculated in the CUP. Fleck-Tooze believes it could be calculated in the CUP but they would discourage using it as an individual yard. We are trying to encourage that development be clustered and outside the floodplain area so we don't have it on individual lots.

Taylor asked for further clarification of the no adverse impact. Fleck-Tooze explained that it is an umbrella policy goal where the actions of one property owner not impact the other.

Each local community decides what that means. It is adopted individually, community by community, as appropriate. It is a concept that serves as a framework for the more detailed regulations and standards.

Bills-Strand assumes that a business could develop and put the parking in the floodprone area. Fleck-Tooze concurred. These developments would need to be evaluated as to the intent of the land use, etc. Bills-Strand further commented, then, that it doesn't have to be this untouched greenbelt if they want to use it for parking, etc. Johnson suggested they can also go into the minimum corridor but they then have to go through the sequencing. There is flexibility in how that can be used.

Larson assumed that the same is true on residential. If there was a lot 200' deep and you put the house on the front 70', the back 100' could be in the floodplain. Would the property owner have to give an easement? Fleck-Tooze suggested that you want to be able to clearly designate the building area of the lot and make sure that information runs with the property owner. Yards and open space are very compatible uses of the floodplain.

Taylor inquired as to when the flood standards would be determined and applied. Fleck-Tooze stated that it would be done when a plat is submitted or could be done at the time of building permit.

Marvin asked for clarification of the upstream regulations and how they would be applied. Fleck-Tooze stated that under the proposed ordinance, along a stream with a defined bed and bank, a minimum flood corridor would be preserved, and the size of that corridor is the width at the bottom of the channel plus 60 feet plus six times the depth of the channel. The intent of the standards is that you would not be applying in just a grass swale or other drainage. It would need to be a defined channel.

Bills-Strand wondered how difficult it is going to be to widen a street if you cross a floodplain. Fleck-Tooze believes that is where the standards provide the most flexibility. The standards allow for a rise if a road crossing structure needs to be created.

Bills-Strand asked Fleck-Tooze to address the email from Dave Lococo. Fleck-Tooze stated that the South Beltway would fall under the status of having already had its environmental impact statement and public hearing, so that would be one of the projects that would be able to meet today's standards, and today they can cause no greater than 1' of rise. Bills-Strand wondered whether this could be identified in the proposed map changes. Fleck-Tooze stated that any additional information that is available will be incorporated into the records. She did not believe there was a need for any amendment to the ordinance to accomplish Mr. Lococo's concerns. It really relates to mapping concerns which are not identified here.

Taylor referred to Peter Katt's testimony regarding high potential of sprawl because it will add exorbitant costs to housing and cause people to move out of the city. Fleck-Tooze suggested that sprawl refers to poorly planned land consumption and development. We have already planned for the costs because these standards only apply to those areas that we have already shown to be outside of our urban growth area. With regard to specific development costs, she does not believe it to be as great as the testimony would relate.

Pearson pointed out that steel prices have gone up four times in the last 12 months, so the cost of the beam in the basement is probably going to be in excess of the 1.4% increase in costs.

**COMPREHENSIVE PLAN AMENDMENT NO. 04017**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 31, 2004

Carlson moved approval, seconded by Pearson.

Larson believes this is a splendid plan and he salutes everyone that has been working on it. He is impressed that we are finally looking into the future instead of reacting to the past. He has a lot of empathy for those living now in some of the older areas that maybe at one time were out of the floodplain and now they are in the floodplain and the value of their homes have decreased. He believes we are very close to a consensus on this and he is impressed about that.

Larson moved to amend to defer the vote for two weeks until we get some of these technicalities worked out. Upon further discussion, motion was withdrawn.

Carroll believes it is very good planning. He applauds the staff for getting the standards in place ahead of the growth before it's too late. We are talking about a small percentage of land in the new growth area and he does not believe the cost to the development is going to be that great compared to the cost if the ordinance is not adopted. Getting out in front is very important.

Taylor is thankful and grateful for all of the commentary from the citizenry. This is probably one of the best plans that we have had before us that is not just reeking of controversy. This is probably the most enjoyable comprehensive plan amendment that he has seen.

Carlson stated that he is also in support. The proposal is proactive. It is important to set regulations on land before it is developed. The idea of no adverse impact is the core of what zoning and land use is supposed to be about. He is also excited because this is very pro-affordable housing because it implements standards that will protect the existing affordable houses.

Motion for approval carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council and the Lancaster County Board of Commissioners.

**CHANGE OF ZONE NO. 04018,**  
**MISCELLANEOUS NO. 04001**  
**and MISCELLANEOUS NO. 04002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

March 31, 2004

At the request of the Chair and the agreement of the Director of Planning, all three applications were called for action together.

Main Motion: Taylor moved approval, seconded by Pearson.

Motion to Amend #1: Carlson moved to amend to clarify the mitigation language in Article 10.4.3 of the Drainage Criteria Manual to the satisfaction of the Nebraska Department of Roads and the City of Lincoln, seconded by Marvin and carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Krieser absent.

Motion to Amend #2: Sunderman moved to make the appropriate amendment to the text to allow businesses to grow and expand if they are not increasing the footprint, regardless if improvements are greater than 50% of its value, seconded by Bills-Strand. Upon further clarification from Fleck-Tooze and further discussion, Sunderman withdrew Motion to Amend #2. It was determined that the proposed standards accomplish the intent of Sunderman's motion.

Bills-Strand discussed making an amendment to address the "defined bed and bank" issue. Perhaps we don't need the 60' wide protective corridor and should allow for mitigation at the top of the stream. In the bed and bank situation, if it is not in an existing floodplain or floodprone area, they should not have to meet the 60' corridor and should have the flexibility to mitigate. Fleck-Tooze suggested that the Commission could strike the application of the standards to channels above the 150-acre threshold, if that is desired. If you want to qualify that statement, then we might have to wordsmith it. Fleck-Tooze further discussed the impacts of this amendment.

Carlson pointed out that a professional would be determining whether it is a defined bed and bank, so he believes there has been some allowance for this.

Johnson further clarified that taking the standard out is one option. Johnson also suggested that a ratio could be applied, e.g. 60' at 150 acres, 20' at 50 acres, and 10' at 25 acres. Then nothing with 25 acres or less. This would be tapering it closer to the depth. Carlson is uncomfortable picking the number.

Pearson commented that we had a committee that studied this for 18 months, and then we had testimony that the easiest place to control flood is in the upper levels – we can control volume, speed and sediment. Why would we start messing with that at the 12<sup>th</sup> hour? This issue can go to the City Council. She does not believe the Commission has the ability to make the change at the moment.

Bills-Strand stated that she will go forward with the amendment

Motion to Amend #3: Bills-Strand moved to amend giving direction to Glenn Johnson of the Lower Platte South NRD and Nicole Fleck-Tooze of Public Works & Utilities to draft language which narrows the Minimum Flood Corridor in areas which have a defined bed and bank that are smaller in width, which are not in the floodplain or floodprone areas, in order to have less economic impact on development in those areas, seconded by Larson.

Bills-Strand explained that the purpose of this amendment is to allow additional land to be developed with less land that is not allowed to be developed.

Pearson does not think this language is going to increase the area that is available for development.

Bills-Strand believes it will take 60' down to 10' and allow 50 more feet to be able to be developed.

Pearson believes this is in the most sensitive area where the most quality water develops.

Motion to Amend #3 carried 5-3: Sunderman, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Pearson, Carlson and Taylor voting 'no'; Krieser absent.

Motion to Amend #4: Bills-Strand moved to amend the fill permit regulations to the effect that existing fill permits would be grandfathered from the 2-year expiration date, leaving all existing fill permits that were obtained prior today alone, seconded by Larson.

Carlson is opposed to this amendment. Over the past five years, we have already seen people rushing to get a fill permit. It is reasonable to have two years if you are actually planning to do something. Bills-Strand at least would like to extend the existing fill permits for a longer period of time. She does not want to overburden current employers in Lincoln. Right now, existing fill permits are good forever and this legislation limits it to two years.

Fleck-Tooze cautioned that the grandfathering may not be appropriate from a legal standpoint, although the City Attorney was not available for comment. There is also a provision for a time extension.

Motion to Amend #4 failed 3-5: Sunderman, Larson and Bills-Strand voting 'yes'; Pearson, Carlson, Taylor, Carroll and Marvin voting 'no'; Krieser absent.

Larson called the question.

Main motion for approval, with Amendments #1 and #3 above, carried 8-0: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand voting 'yes'; Krieser absent. This is a recommendation to the City Council.

**ITEMS NOT APPEARING ON THE AGENDA:**

Members present: Pearson, Carlson, Sunderman, Taylor, Larson, Carroll, Marvin and Bills-Strand; Krieser absent.

Mike Morosin, past President of the Malone Neighborhood provided information to the Commission on what is within a half mile of his house, "institutional rent sinking behavior and social services packing." He showed photographs and referred to the Light House at 20<sup>th</sup> & N; Urban Indian Medical Center at 17<sup>th</sup> & N, which has become a storage facility; Social Services Club 2000; O'Shea client dorms at 20<sup>th</sup> & Q and 21<sup>st</sup> & Q; Matt Talbot Kitchen, DayWatch, client dorms at 25 & Q, 25<sup>th</sup> and R, and at 24<sup>th</sup> and R. The muni pool will become a casualty of JAVA. We will soon see a community center design without a pool. We are going to have two staffs working there. Why not let the Malone Community Center run the whole multi-cultural center?

Morosin believes that the Planning Commission is going to be making many decisions on facilities that get put in older neighborhoods in the future. This is all within ½ mile of his home. His neighborhood cannot take any more. The older neighborhoods are under a great burden.

There being no further business, the meeting was adjourned at 7:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on April 14, 2004.

### 10.4.3 Mitigation

Mitigation is required for stream crossing structures causing increases in flood heights greater than 0.05 feet for the 100-year flood. Grading impacts to minimum flood corridor areas should be revegetated with plant material compatible with the minimum flood corridor wherever possible. Impacts to base flood elevations shall be documented and mitigated in accordance with the following:

1. Acquisition, by land rights purchase, flowage easement, or other legal arrangement that runs with the property, of the right to increase the flood levels on all affected lands.
2. Documentation shall include the complete hydrologic and hydraulic study for the stream crossing. The pre-construction and post-construction base flood elevations shall be included for each parcel of land being impacted along with a parcel-based map identifying the impacted areas.



March 31, 2004 - 3:00 p.m.  
Lincoln, NE Planning Commission meeting  
TESTIMONY re: FLOOD STANDARDS FOR NEW GROWTH AREAS

Submitted by: Virginia K. Wright, MS  
814 Lyncrest Drive, Lincoln, NE 68510  
Representing Lincoln Neighborhood Alliance  
Board of Directors

Good afternoon, members of the Lincoln/Lancaster Planning Commission. My name is Ginny Wright. I am a member of the Eastridge Neighborhood Association, and am testifying as the Lincoln Neighborhood Alliance representative.

The Lincoln Neighborhood Alliance (LNA) is in favor of the NO ADVERSE IMPACT, NO NET RISE, and COMPENSATORY STORAGE criteria as proposed in the Flood Standards for New Growth Areas.

I'd like you to again look at the photo copy of the newspaper article in Mrs. Allen's handout. In the lower, center part of that page you can see that Lincoln officially received only 1.17 inches of rain! Obviously, that flood had to have originated outside the city, and equally obvious it had a major impact on the city. It should illustrate the necessity of establishing storm water control as far out as we can.

Enclosure 1 (on the back of my handout) shows the Beal Slough flow rates as reported by the Beal Slough Stormwater Master Plan. This plan was developed after very localized flooding in Beal Slough in 1996 and 1998.

The lower line (blue) was developed by FEMA's Flood Insurance Study (FIS) of 1978. Remember that *FIS reports are only a snapshot of conditions that existed on that day*. It does not anticipate or predict the effects of any future development. We would suggest, however, it is a valid tool to factor into planning decisions.

This is amply demonstrated by the top line (red) which consists of 1998 data. Please note that the discharge of Beal Slough into Salt Creek was almost double from 1978 to 1998. You can see that a big increase in flow occurs at 27<sup>th</sup> Street. This is where Tierra Branch enters Beal Slough. Quoting from page 16 of the Beal Slough Stormwater Master Plan: "During the heavy rains of 1996, runoff from previously developed areas below the Williamsburg facilities caused flooding of homes, businesses and roadways."

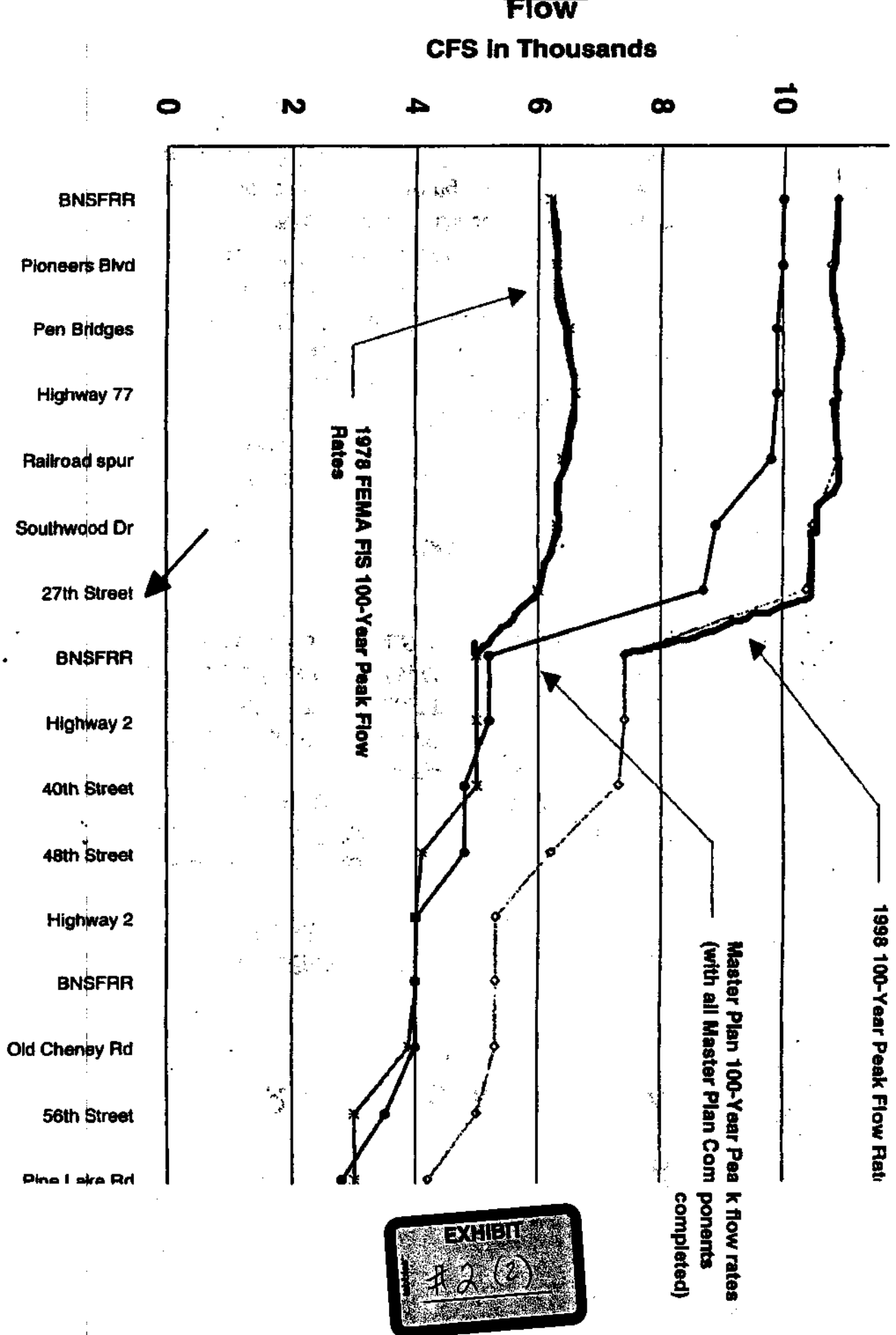
It is not possible to find cheap fixes. There is no inexpensive or low cost way of correcting Tierra Branch flow rates because all of the land is completely developed. The better, cost effective route is to prevent these problems from occurring. The Tierra Branch watershed is now completely inside city limits, but **if these standards had been in effect in 1985**, all of the investments in housing, businesses, and thoroughfares would have been in far less danger of flooding.

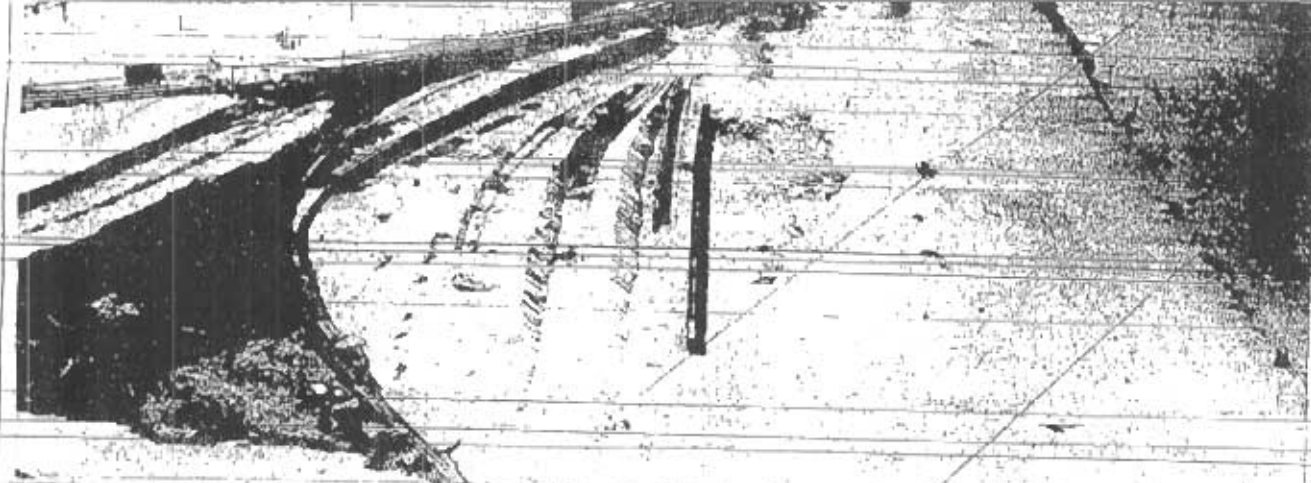
Wise investors learn from their past mistakes. So should we. It is clear that Lincoln should not allow another Beal Slough situation. The Flood Standards for New Growth Areas will help prevent another Beal Slough - a flood by design. The Lincoln Neighborhood Alliance strongly encourages implementing the Flood Standards for New Growth Areas in the public interest for businesses, neighborhoods, and infrastructure. Thank you.





# Enclosure 1: Figure ES-5 from BEAL SLOUGH STORMWATER MASTER PLAN





**LINCOLN'S INDUSTRIAL AND RESIDENTIAL LOWLANDS FLOODED**—An aerial view showing one small section of the Lincoln Salt creek flood between S street (left) and Culver street (right). The Salt creek natural channel is out of the picture about two blocks at the right side. Salt creek itself clogs over the

horizon as suggested by the glow at the top right and descends from Hickman into the saucer bowl in which Lincoln is settled. Oak and Antelope creeks spill into the channel several blocks out of the picture to the left. Tracks in the foreground represent the Burlington main station and Union Pacific freight yard. (Journal Staff Photo.)

## 'Serious Flooding' Is Still Expected At Ashland: Climax Reached at Lincoln

Lincoln's worst flood since 1901 appeared to have reached a climax Tuesday morning, with the highest Salt creek measurement at the disposal plant at 32nd and Thermo, registering 12.3 feet at 10 a. m. Tuesday. At noon it had gone down to 41.2.

There was no new news from south Lincoln, where the water on U. S. Highway 77 had crested three feet. But the Lincoln weather bureau warned that "serious flooding" could yet be expected at Ashland and in the lowlands between Lincoln and Ashland from Salt creek.

R. A. DYKE, of the U. S. weather bureau said that the flood was the "worst in Lincoln since 1901," when the highest recorded Salt creek measurement was 14.2 feet at the disposal plant. Tuesday's record, Co. Eng. Louis Weaver said reports from Newman, Reed and Sprague indicated that Salt creek stages were the highest in history. "I said, 'be assured, homes and buildings were flooded but telephone communications are severed in those towns before a complete report could be obtained."

**THE RAINS** began Monday night—approximately the same time President Truman arrived here. Unlike the Missouri river chief executive, they did not make their visit a short one. At least 100 families were made homeless in southwest Lincoln by the flood, according to Ernon Zimmerman, director of Nebraska Red Cross. An emergency Red Cross station was set up at Clark elementary school 8th and F, by the organization. Zimmerman said that "no cases of a serious nature" had been reported to the emergency hospital yet. "We are trying to meet immediate emergencies like food and clothing for the homeless," Zimmerman said. "Rehabilitation work will start as soon as needs can be determined."

Louis Horne, director of the local Community Chest, said the services of his organization had been offered. He added it case workers and other volunteers were available to do anything Zimmerman requested.

A NUMBER of the national red "ducks" scurried about inundated part of Lincoln, being helpless citizens who not scrambled to safety in order to avoid the angry waters that surrounded their homes. As long as many people during

peared dazed and were not quite certain what had happened. Although a flood in 1942 covered some of the same area of southwest Lincoln with water, most of the people were certain that a flood such as they had been reading about in Minnesota, could never happen here.

**ONE OF THE DUCKS** struck a submerged fire hydrant at First and M Tuesday morning and sank in about four feet of water. Rescue workers and other persons aboard the craft were transferred in another duck. At 10 a. m. Tuesday, Capt. Walter Harrold, of the national guard, officer in charge of rescue operations, said "All persons have been rescued who want to be rescued." He added that some of the people, because of the flood at their homes, decided against leaving the house.

**SOME OF THE** rescue operations were hampered by the inherent curiosity of persons who loitered at the scene at every opportunity for sight-seeing. Police were necessary to direct traffic at a number of places in southwest Lincoln.

A little before 12:30 p. m. Tuesday City Engineer D. L. Erickson ordered the closing of North 10th street following an inspection of the bridge crossing Salt creek near the Cornhusker highway.

**OFFICIALS WERE** of the opinion that the jettisoning and straightening of Salt creek, which has been done in the past number of years, was effective in keeping the flood stage from reaching new all-time heights. The channel north of the fairgrounds was running bankful at near noon Tuesday.

Back water which had crossed Highway 8 west of Lincoln in flood large areas of farm land

had reversed its flow at 10 a. m. and was returning to the main channel of Salt creek.

**RECEDING WATERS** on the south slope of the overpass on Number 6 north of O street left more than an inch of black sludge mud on the pavement, evidence of the thousands of tons of rich black soil carried by the boiling waters on their way to the Missouri above Plattsmouth.

The main source of difficulty at noon Tuesday was the runoff water from the rain that was pouring into Lincoln from the 200-square-mile water shed which drains into Salt creek at the point where it is joined by Oak creek. The momentum of the water in the ground

## Heavy Rains Are Reported

Precipitation reports from the Lincoln weather bureau for the 24 hours ending at noon Tuesday included:

Arlino	1.33	Omaha	1.49
Beatrice	2.01	Takamaka	1.80
Chadron	1.15	Wichita	2.80
Clarke	3.06	York	3.30
Conrad	1.00	York	3.30
Grand Island	1.17	York	3.30
Lincoln	1.17	York	3.30
Nebraska	1.17	York	3.30

Precipitation reports from the Lincoln Telephone and Telegraph company for the 24 hours included:

Ashland	1.15	Wymore	1.40
Beatrice	2.01	York	3.30
Clarke	3.06	York	3.30
Conrad	1.00	York	3.30
Grand Island	1.17	York	3.30
Lincoln	1.17	York	3.30
Nebraska	1.17	York	3.30

## Two Men, Woman and Baby Spend Weary Night in Water

By ANNE LONGMAN.  
The Lincoln Journal-News Staff

Picture on Page 40.

Flood night had a happy end for the families of Dale Allen, 200 West South, and B. B. Riblett, 211 West B, his father-in-law, with everyone accounted for and safe Tuesday morning.

For three hours of a dark night at 1st and South, however, to members of the families clinging to the only protruding corner of a truck, water to their shoulders and a 10-month-old baby, Victor Allen, precariously balanced in a tub on top of a log by the truck, the future seemed uncertain.

**MRS. ALLEN**, who is expecting another child, said she was perched on the truck corner, her legs in water well above her knees.

At 6 a. m. the Allens and B. B. and Henry Riblett were rescued by a P. T. boat. Mrs. Allen and Victor were taken to St. Elizabeth hospital where they were found to be in satisfactory condition. The men sought dry clothing.

At 8 a. m. B. B. Riblett learned that his wife, his son, Luther, 12, and daughter Ermeyan, 13, left at the home on West B, had reached safely at the home of a neighbor.

**AT THE HOSPITAL** Tuesday morning Mrs. Allen related the experiences of the night. "Frightened," she exclaimed, "you don't know how frightened I was, especially for Victor. The men joked as they stood shoulder high in the water but I couldn't see anything to joke about."

Dale Allen, who has a garbage route, and Mrs. Allen were awakened in their first floor bedroom shortly after midnight by Mrs. Allen's father and his brother, Henry Riblett, both employed at the Burlington ice house. The water then covered Allen's four acres but had not reached into the house. The men moved the refrigerator and other furniture to the upstairs.

**MRS. ALLEN**, Victor and Henry Riblett then got into Riblett's Ford passenger car while B. B. Riblett and Allen took the 1947 truck and started out behind them.

The Ford went two blocks to 1st and South, before the water swept it off the road.

As soon as the truck was swept into the ditch.

**"THE FORD** was entirely under water and all we could see of the truck was one corner. Daddy took the baby on his shoulder and finally, delving thru the water which was above our shoulders, we got to the truck. We climbed again a log by the truck and hung to the corner. By this time it was about 11 p. m.

The men got a tub out from under the truck top and put the baby in it. He had on his nightgown and two blankets and a little hood. Daddy balanced the tub on the log by the truck for the three hours we waited.

**DALE** ON A NIGHTMARE of cold. The men wore drapes in overalls and jackets. It was freezing cold, with the wind blowing water over us.

The baby cried off and on but we kept him fairly dry in the tub and he slept part of the time. "I think what was thought of most was that my mother must be worrying herself sick. She knew daddy and Henry came over to wake us up but after that she would not know what happened."

**MRS. ALLEN** Tuesday morning was expecting to leave the hospital for the home of her mother-in-law, Emma B. Allen, at 1101 No. 29th. Little blue-eyed Victor seemed in good health and spirits as a nurse dressed him in daytime garb.

The men were ruefully wondering when they could get out to their flooded homes. Riblett said neighbors told him the water was standing only about two feet in his house but Allen's home on West South was expected to be pretty well inundated.

**WHILE** MRS. Allen was congratulating herself that everyone was saved she had one regret in addition to the fact that the house was probably in bad flood condition.

She had prudently put money, checks and insurance policy into a tin box, which she took with her. But sometime during the night she lost the tin box.

**Gov. Peterson** to Speak At Broken Bow June 11. BROKEN BOW, Neb. (AP) Gov. Val Peterson is scheduled

# On the Inside Pages Today

Full page of flood pictures  
Text of Truman's Lincoln story  
Pictures of Truman in Lincoln  
Story of Dr. Bunche's Lincoln

More Flood Pictures

**EXHIBIT**

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Two Men, Woman and Baby Spend Weary Night in Water (May 9, 1950)

by Anne Longman, Staff Writer, the Lincoln Journal Newspapers

Flood night had a happy ending for the families of Dale Allen, 200 West South, and B.B. Riblett, 513 West B, his father-in-law, with everyone accounted for and safe Tuesday morning.

For three hours of a dark night at 1st and South, however, to members of the families clinging to the only protruding corner of a truck, water to their shoulders and a 10-month-old baby, Victor Allen, precariously balanced in a tub on top of a log by the truck, the future seemed uncertain.

Mrs. Allen, who is expecting another child late in June, was perched on the truck corner, her legs in water well above her knees.

At 4 a.m. the Allens and B.B. and Henry Riblett were rescued by a P-T boat. Mrs. Allen and Victor were taken to St. Elizabeth Hospital where they were found to be in satisfactory condition. The men sought dry clothing.

At 8 a.m. B.B. Riblett learned that his wife, his son, Luther, 12, and daughter Ermajean, 15, left at the home on West B, had reached safety at the home of a neighbor.

At the hospital Tuesday morning Mrs. Allen related the experiences of the night.

"Frightened," she exclaimed, "you don't know how frightened I was, especially for Victor. The men joked as they stood shoulder high in the water but I couldn't see anything to joke about."

Dale Allen, who has a garbage route, and Mrs. Allen were awakened in their first floor bedroom shortly after midnight by Mrs. Allen's father and his brother, Henry Riblett, both employed at the Burlington ice house. The water then covered Allen's four acres but had not reached into the house. The men moved the refrigerator and other furniture to the upstairs.

Mrs. Allen, Victor and Henry Riblett then got into Riblett's Ford passenger car while B.B. Riblett and Allen took the 1947 truck and started out behind them.

The Ford went two blocks, to 1st and South, before the water swept it off the road.

"The doors on both sides seemed to lock as soon as the water hit," said Mrs. Allen. "Daddy and my husband came up, got our doors open and got us out, then the truck was swept into the ditch.

"The Ford was entirely under water and all we could see of the truck was one corner. Daddy took the baby on his shoulder and finally, detouring thru the water, which was above our shoulders, we got to the truck. We climbed upon a log by the truck and hung on to the corner. By this time it was about 1 a.m.

"The men got a tub out from under the truck top and put the baby in it. He had on his nightgown and two blankets and a little hood. Daddy balanced the tub on the log by the truck for the three hours we waited.

"I had on a nightgown and coat. The men were dressed in overalls and jackets. It was freezing cold, with the wind blowing water over us.

"The baby cried off and on but we kept him fairly dry in the tub and he slept part of the time.

"I think what we thought of most was that my mother must be worrying herself sick. She knew Daddy and Henry came over to wake us up but after that she would not know what happened."

Mrs. Allen Tuesday forenoon was expecting to leave the hospital for the home of her mother-in-law, Emma H. Allen, at 1101 No. 29th. Little blue-eyed Victor seemed in good health and spirits as a nurse dressed him in daytime garb.

The men were ruefully wondering when they could get out to their flooded homes. Riblett said neighbors told him the water was standing only about two feet in his house but Allen's home on West South was expected to be pretty well inundated.

While Mrs. Allen was congratulating herself that everyone was saved, she had one regret in addition to the fact that the house was probably in bad flood condition.

She had prudently put money, checks and insurance policy into a tin box which she took with her. But sometime during the night she lost the tin box.

From : Russell Miller  
341 S. 2  
Lincoln, Nebraska 68510

31 March 2004

To : Lincoln Lancaster Planning Commission

Dear Commission Member,

As Mrs. Allen reported earlier today, floods and flood water can be very dangerous. Officially, Lincoln only received 1.17 inches. The water that almost killed her and her family was caused by heavy rains just to the south of 1950 Lincoln.

That flood plus a similar flood the following year motivated the business community to create the Salt Valley Flood Control project in 1958 which resulted in 10 dams and the Salt Creek Levees that were completed in 1968. This cost 12 million dollars (approximately 54 million in today's dollars) and it took Lincoln essentially out of the flood plain. In late 1970's FEMA conducted a new flood insurance study that put major parts of Lincoln back in the flood plain. Please review enclosure 1 which is a May 10, 1950, Lincoln Star article detailing the business community flood loss of 200,000 dollars (approximately 1 million today). On the back side of enclosure 1 is a listing of those 1950's locations and who owns them today. My point is that businesses still occupy those locations plus new ones in adjacent locations have been established. These businesses are still at risk of being heavily damaged by every rain that exceeds a 50-60 year rain event.

THE QUESTION THAT MUST BE ANSWERED IS "WHY ARE WE IN DANGER TODAY AFTER SPENDING THE EQUIVALENT OF \$54 MILLION IN THE 1960'S THAT MADE US SAFE???" The Salt Creek levees were supposed to contain the 100 year rain event, not the 50-60 rain event as they are predicted to do today.

The answer in three words is BAD BUSINESS POLICY. That is the policy of permitting unregulated development without regard to the consequences to the businesses downstream. Everybody must appreciate and understand that his project will create more water run-off. In addition, if your project is in the floodplain, any new fill and new buildings will displace floodwater that will relocate on somebody's property.

If the concepts of NO ADVERSE IMPACT, NO NET RISE, and COMPENSATORY STORAGE had been practiced starting in the 1960's, today's Lincoln would not be in the floodplain and all of that money spent on the levees and dams would not have been wasted.

The following photos will show what happens when these three concepts are not practiced.

Enclosure 2 : Northeast corner of 1st & C Streets facing west. The lower blue line on the sign is the predicted flood water height using FEMA's 1978 data or Base Flood Elevation (BFE). The upper red line is the flood height allowed by current Lincoln ordinance; the increase is caused by building or filling in the floodplain. Please note that the 1960's levees were supposed to keep this area dry, not have water chest high.

Enclosure 3 : Same corner but facing north with the same fire hydrant as in enclosure 2. The house (108 C St.) was built in 1910 and it was elevated with dirt fill, (maybe for flood protection?), but notice that it still has basement windows and today's flood water will be above those windows.



Enclosure 4 : House at 119 C St. built in 1960. This house was protected by the levees but now the flood water could be entering through the basement windows. This is my first example of a financial investment that went bad because of other developers' investments filling the floodplain and/or causing increased run-off, thus increasing the amount of flood water on their downstream neighbors.

Enclosure 5 : Duplex at 110/112 B St., built in 1978 before FEMA had completed their flood study. Another investment that went bad because of other investors' actions.

Enclosure 6 : Duplex at 120/122 B St. built in 1994. This house typifies current floodplain building practices with first floor elevated above expected flood heights.

Enclosure 7 : Picture showing the relationship of 110, 120 and 128 B Street. I am trying to illustrate the effects of changing water heights as each investor copes with a moving target of ever increasing flood heights.

Enclosure 8 : Standing on the A St. bridge crossing Salt Creek, facing west. Please note the difference in elevation of the business on the right (north side built in 2002) compared to the businesses on the left (south side built in 1979).

The point I am trying to make is that each of these good business investments turned sour and decreased in value because the standards of NO ADVERSE IMPACT, NO NET RISE, and COMPENSATORY STORAGE were not the law and were actively resisted by a small but very vocal business segment. Unless these standards are enacted today, all the investments currently being made will be in harm's way in the very near future. Today's business strategy is to elevate the property above the predicted flood height. That only works if nobody else does the same thing. As you know from the various projects that come before you, everybody is filling the floodplain and creating increased run-off. This displaced water results in a moving target as to how much fill is necessary to get your project above the flood. This is a very bad business strategy that can only be corrected by enacting the proposed flood standards before you.

I understand that the proposed regulations apply only to the areas outside of Lincoln's city limits and it would much better if these regulations applied to Lincoln also. Water only knows 1 law; fill the lowest location first. As citizens of Lincoln and Lancaster County we must recognize that our actions with stormwater will impact our neighbors and our **neighbor's actions will impact us**. I urge you to pass this law and make it retroactive to January 1, 2004.

Thank you,

  
Russell Miller

# ENCLOSURE 1

Because of difficulty in reading the other side (but what can you expect from 52 year old micro-film) here is a listing of the businesses mentioned.

Lincoln Star May 10, 1950

	\$ amount of flood damage in 1950 dollars from newspaper		Current owner
Lincoln Steel Works	no figure but thousands		Owen Industries fm Omaha
Hatchery plant	40,000	close to 56th & Beal Slough	
Prairie Maid Meat	4,500	327 F st	ARCK Foods fr Falls City
Van Sickle Glass & Paint	1,000	143 S. 10	
Mid-West Steel	3,000	703 N st.	Mid-West Steel
Wilson & Dana Produce	1,000	216 S. 7	Mid-West Steel
Grothe Milling	3,000	635 N and	IMS PROPERTIES
Grothe Milling		545 L	JDD Inc
Wilson Brickson & Lumber	1,015	660 N	Folmer Folmer Inc
American Stores	over 1,000	320 N	UNL Foundation???
Griswold Seed	2,500	729 N	Mid-West Steel
Arnos Coal	5,000	502 L	IMS PROPERTIES
White Foundry	3,000-5,000	630 K	Jansky Inc
Lincoln Oil	3,000-5,000	240 P	Hergert Oil
Gooch Milling	1,000	540 South	Gooch Milling (ADM)





ENCLOSURE 2



1ST AND C STREET  
FACING WEST

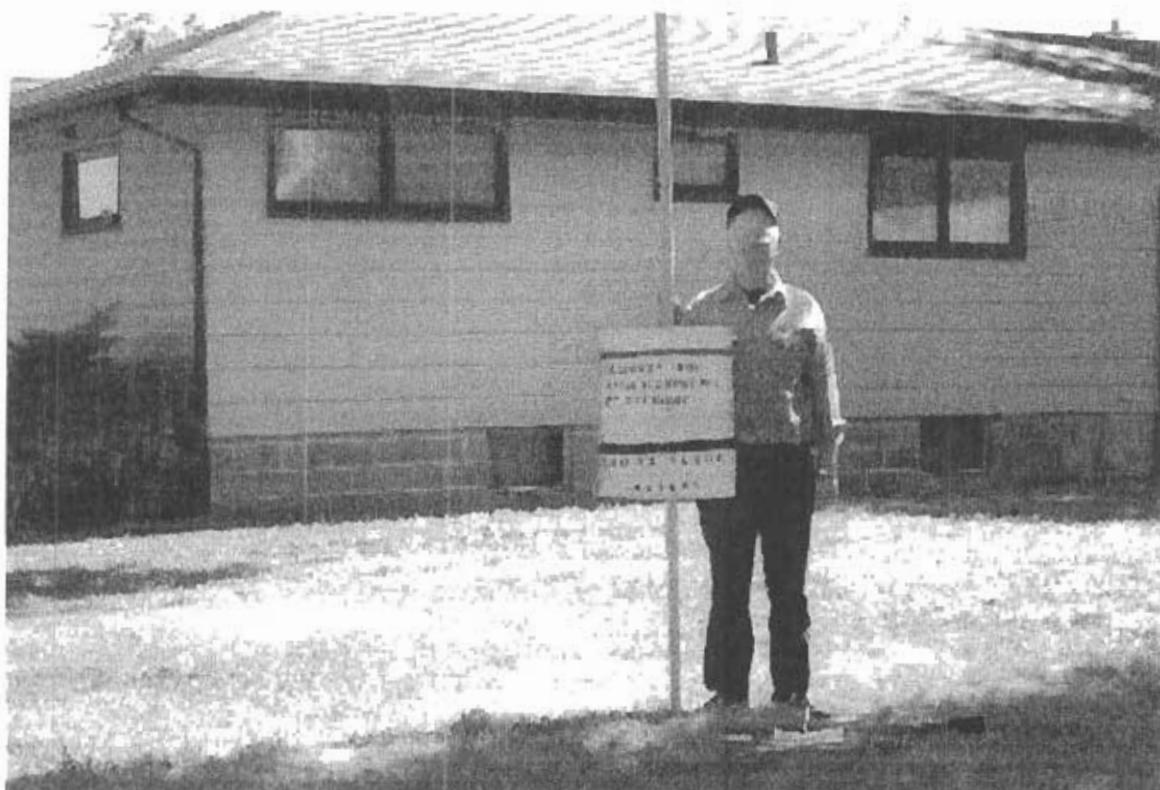


ENCLOSURE 3



108 C STREET  
BUILT 1910

ENCLOSURE 4



119 C st  
house built 1960

ELCLOSURE 5



Duplex 110/112 B st  
built 1978

ENCLOSURE 6



Duplex 120/122 B st  
house built 1994

ENCLOSURE 7



1 st. house Duplex 110/112 B st.  
built 1978  
same as enclosure 5

Middle house duplex 120/122 B st.  
built 1994  
same as enclosure 6

3rd house duplex 128 B st.  
built 2001

ENCLOSURE 8



Facing west on A st bridge over Salt Creek  
picture taken Septmeber 2003



## **ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.**

2809 Fish Hatchery Road, Suite 204 Madison, Wisconsin 53713

(608) 274-0123

Website: [www.floods.org](http://www.floods.org)

Email: [asfpm@floods.org](mailto:asfpm@floods.org)

Fax (608) 274-0696

### **"No Adverse Impact" Floodplains A White Paper June 2000**

#### **BACKGROUND**

Flood damages in the United States continue to escalate. From the early 1900's to the year 2000, flood damages in the United States have increased by as much as six fold approaching \$6 Billion annually.

In recognition of growing disaster damages, the National Flood Insurance Program was created in 1968. The NFIP was established as a program to provide federally backed flood insurance in exchange for the adoption of local and state land use standards intended to reduce future flood damages.

While the founding principal of the NFIP is sound, serious questions remain as to whether the NFIP is effectively meeting its founding objectives. On one hand, the NFIP has provided an approach that allows floodplain construction in a manner that reduces some flood damages for that individual structure. On the other hand, NFIP standards also allow construction that is only marginally protected from today's 1% flood, is damaged by tomorrow's 1% flood, and that can be constructed in a manner that could induce flood damages on other properties.

The standards themselves, at best a political compromise, were established with an eye towards managing the flood insurance fund and having standards consistent with the principals of insurance. Unfortunately these standards are falling short of reducing flood damages for the current 1% flood, and especially for future flooding.

Worse yet, the standards have become a "ball and chain" around FEMA initiatives, providing a mechanism for individuals to modify the nation's floodplains while at the same time creating the potential to induce flood damages and drive up future disaster costs.

Unfortunately, in too many cases, FEMA has become the default standard bearer, with only a handful of state and local governments taking the initiative to adopt standards in excess of FEMA minimums. There is a need to revise programs that encourages local governments to take "ownership" of their flood problems and to provide financial encouragement through better cost shares for those doing the right thing.

While some state and local governments may have abdicated their responsibility, most local governments have simply followed a course that the FEMA standards are an acceptable standard of care, perhaps not knowing that these very standards could induce additional flooding within their community.

**"Dedicated to reducing flood losses in the nation."**



This central message - that we are inducing flood damages - has not been communicated effectively, in part due to the floodplain management community as a whole spending too much time debating issues of individual standards while not stepping back and evaluating the broad impact of these approaches.

There is a need to rethink and recommit to what we are accomplishing in our efforts to reduce flood losses in the nation, and to determine if there are better ways for meeting this goal.

#### **"No Adverse Impact Floodplains"**

"No Adverse Impact Floodplains" is a managing principal that is easy to communicate, and from a policy perspective, tough to challenge. *In essence, a "no adverse impact floodplain" is one where the action of one property owner does not adversely impact the flooding risks for other properties, as measured by increased flood peaks, flood stage, flood velocity, and erosion and sedimentation potentials.* "No Adverse Impact Floodplains" would become the default management criteria, unless the community has developed and adopted a comprehensive river plan that identifies acceptable levels of impact, joined together with appropriate mitigation measures and a plan for implementation. "No Adverse Impact Floodplains" could be extended to the watersheds as a means to promote the use of retention and detention technologies to mitigate increased runoff from urban areas.

While the "No Adverse Impact Floodplains" initiative will result in improved standards for the 1% flood, its true strength is that it virtually ensures that future development actions in the floodplain must be part of a locally adopted plan. This removes the mentality that floodplain management standards are something imposed by FEMA and promotes local accountability for developing and implementing a comprehensive plan and strategy for the floodplain. Giving locals the flexibility to adopt comprehensive local management plans, which would be recognized by FEMA and other federal programs as the acceptable standard in that community, will provide locals with control and support for innovative approaches.

Finally, "No Adverse Impact Floodplains" is an approach that makes sense and is the right thing to do. Too often our discussions on standards become lost on arguing over the range of application and the impact this might have on those that are choosing to encroach into the floodplain. It is time to change. It is time to manage our land and water from the perspective of not inducing additional flood impacts on other properties. It is time to give local communities the ability to manage flood losses through comprehensive local plans.

#### **Conclusion**

Current management systems within the floodplain are costly and often times permit development that does not evaluate adverse impacts on other properties. This has led to increased actual and potential flooding potentials. The "No Adverse Impact Floodplains" strategy is an approach that will lead to reduced flood losses within the nation while it promotes and rewards strong management and mitigation actions at the local level.

6-13-00

EXHIBIT #4, page 2

**"Dedicated to reducing flood losses in the nation."**



## G. Task Force Polling Summaries

As discussed in the Facilitation and Process section of Chapter 1, a polling process was developed that allowed each member present to agree, disagree or offer specific word changes to each draft policy. Some Task Force members chose to abstain from the polling process, requested more information before voting, left early or were absent from the room, so attendance and polling results may seem to conflict. The polling results reflect, however, those members present during that particular discussion. Numbers in parentheses indicate, of those who agreed, the number of members who agreed if specific text changes were made.

For consistency, all of the final recommendations are listed in each table. Recommendations with an asterisk are those which were not yet formulated at the time of the polling. A copy of the specific comments from the polling meetings is available from the Public Works & Utilities Department upon request.

### New Growth Areas: Final

Date	Recommendation	Agree	Disagree
2/4/03	1. No Adverse Impact	8	1
2/20/03	2. Floodplain Mapping	11	0
2/4/03	3. No Net Rise/Compensatory Storage	9	0
2/4/03	4. Stream Crossing Structures	(9)	0
2/4/03	5. Stream Buffers	9	0
2/4/03	6. Surplus/Vacated Floodplain Property Policy	9	0
2/4/03	7. Floodplain Buyout Program	9 (2)	0
2/4/03	8. Do Not Charge Floodplain Development Fee	9 (8)	0
2/4/03	9. Best Management Practices	9 (7)	0
	10. Salt Creek Flood Storage Areas (Existing Urban Only)	N/A	N/A
2/20/03	11. Building Construction Standards	(11)	0
2/20/03	12. Substantial Improvement Threshold	(11)	0
2/20/03	13. Cluster Development	11 (1)	0
2/20/03	14. Best Available Study Information	11	0
2/27/03	15. Real Estate Transactions	11	0
	16. Assessments for Floodplain Property	N/A	N/A



Wachiska Audubon Society

4547 Calvert St Ste 10  
Lincoln NE 68506-5643  
(402) 486-4846

March 31, 2004

Lincoln/Lancaster County Planning Commission  
555 South 10<sup>th</sup>, Lincoln, 68508

Dear Members of the Commission:

The Wachiska Audubon Society supports the proposed Flood Standards for New Growth Areas as developed by the Mayor's Floodplain Task Force during 2001, 2002 and 2003. In our view the standards identified by the Floodplain Task Force, after many meetings and much input from floodplain experts, are very conservative. In fact they are the bare minimum necessary to protect the public health and safety in a modern rapidly growing city. Almost everyone agrees now that it is not good public policy to encourage construction of residential and even commercial or industrial buildings in the floodplain. It is difficult to predict the results of such construction, but in the past this kind of development has meant flooding, loss of private property and even loss of life.

Allowing uncontrolled development in the floodplain creates expensive problems for future generations to deal with. This includes the public expense of bank stabilization projects, reservoirs, levees, and detention structures and even the need to buy back land and buildings in the floodplain. We can agree that, if floodplain standards are enacted, landowners who are holding floodplain agricultural land with the hope that it can be developed, may have future profits reduced. There is no way around this dilemma. We cannot continue to create problems for future generations. It is time to take some steps to limit the problems created by floodplain development. Not to do so would be to pass a much bigger problem on to the next generation.

We think the concept of 'No Adverse Impact' is a good one. The basic idea that what one property owner does with his land should not harm a neighboring property owner just makes sense.

We strongly support the concept of a minimum stream corridor width for the mapped floodplain streams to serve as a buffer between the stream channel and the developable property. This minimum stream channel standard already applies to streams that are outside the area of officially mapped streams. This standard far from being adequate as a means of preserving greenspace or open space but is another step in the right direction.

In general the idea of maintaining the floodplains of a city for parks, trails, soccer or baseball fields, some agricultural uses or just as an amenity for a residential or commercial development, makes sense. Intact floodplains can add to the quality of life of Lincoln by creating recreation opportunities, by maintaining some rare and critical wildlife habitat and migration corridors, by providing areas for noise and pollution absorption and by creating a generally a more attractive city. This is an idea whose time is coming. Lincoln should lead the way by enacting the proposed floodplain standards for the new growth areas.

Sincerely,

Tim Knott

Chair, Conservation Committee, Wachiska Audubon Society



Planning Commission Members  
Lincoln, Nebr.  
March 31, 2004

Greetings:

I'm here to address you in the capacity of President of the South Salt Creek Community Organization.

First of all, I will object to the composure of the so-called **APPOINTED** Mayors Flood Plain Task Force simply due to the fact that actually there was not equal representation afforded those of us residents that actually reside and live in the floodplains of Lincoln present during said task force meetings. For some very strange reason, said mayor felt it was more important to assure that there was a majority on the task force favoring Developers, Business and the Realtor Industry

Secondly, I must object to the preference being given proposed new floodplain standards for new growth areas (talk about getting the cart in front of the horse) when in all actuality, the older residential areas of Lincoln that are currently located in various floodplains should in fact be given first consideration. Simply due to the fact there happens to be a huge risk of possible loss of life should a major flood occur especially when one considers the fact that many of the residents of the floodplain areas are senior citizens.

Also please consider the following. If in fact there is additional flood water storage areas being made available upstream this in fact will create a funnel type water flow effect on older residential neighborhoods downstream that are located in the floodplains of Salt Creek and it's tributaries. I'll use this example: One way to think about storage vs. conveyance of flood water is to relate it to traffic at rush hour. If water in a floodplain from a big storm were a bunch of cars heading in the same direction on a freeway at rush hour, what happens when the freeway ends? The water will force its way out into the lower areas downstream and the cars will exit on to neighborhood streets... Keep in mind, a majority of the Salt Creek floodplain has and is being filled without cumulative effects being considered which places older residential neighborhoods down stream at high risk.

Please refer to the back page (fifth page) of a pamphlet distributed by the Lower Platte South NRD and the City of Lincoln that states in part "Today floodplains in Lincoln are regulated primarily based upon maps **GENERATED** by FEMA through the National Flood Insurance Program". That statement is **WRONG**. The City of Lincoln must make the request for mapping therefore, the City of Lincoln is the **GENERATOR**. **Therein lies the problems of Salt Creek simply due to the fact the City of Lincoln will not request immediate upgraded floodplain maps of Salt Creek.**

I have several attachments for your information.

1. Increased Runoff from Increased Construction
2. Today's Floodplain is **NOT** Tomorrows Floodplain.
3. Council reviews proposed rule on development in floodplains dated (5-4-99) check hi-lighted areas closely.

When individuals are damaged by flooding or erosion they often file law suits against governments claiming that the government has caused the damages, knowingly allowed actions that contributed to the damages, or failed to provide adequate warnings of natural hazards. Courts and legislative bodies have expanded the basic rules of liability to make governments responsible for actions that result in, or increase

Go to page 2



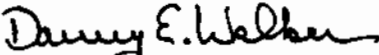
damages to others. Courts have, according to common law, followed the adage "use your own property so that you do not injure another's property". Under common law, no landowner, public or private, has the right to use his/her land in a way that substantially increases flood or erosion damages on adjacent land.

Communities that cause or permit an increase in flood or erosion hazards may be liable for monetary damages to injured individuals. Increased flood and erosion hazards can be caused by construction projects undertaken, or permitted, by a local government.

Landowners damaged by flooding are also suing governmental entities that fail to adequately administer or enforce floodplain regulations, particularly where an issued permit resulted in damage to other lands.

Be advised, Instead of spending millions of dollars towards the purchase of easements on fringe areas outside the City Limits of Lincoln (which incidentally, one could say is nothing more than catering to developers) a much wiser choice would have been the purchase of land from 1<sup>st</sup>. And South Sts. To Folsom Sts. For detention thus creating a Oak Lake type area..

Thank you



Danny E. Walker

President

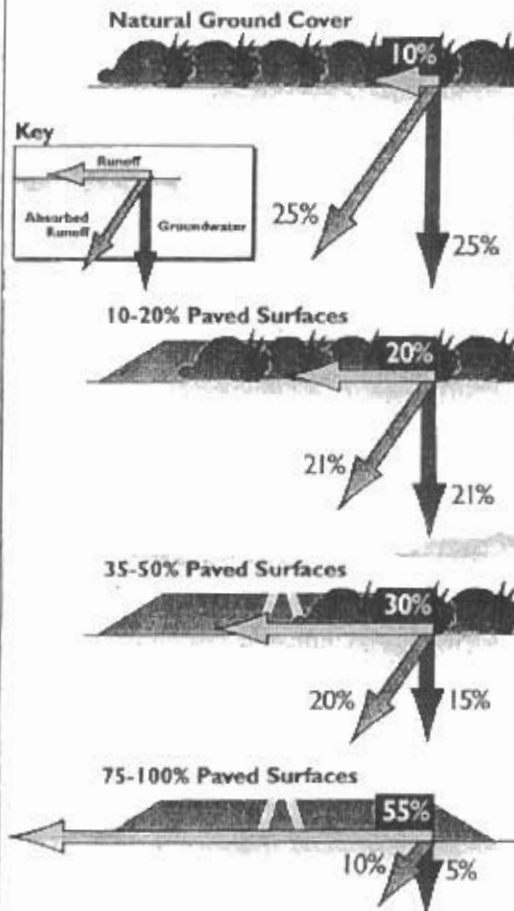
South Salt Community Organization

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FEMA

EPA .

## Increased Runoff from Increased Construction

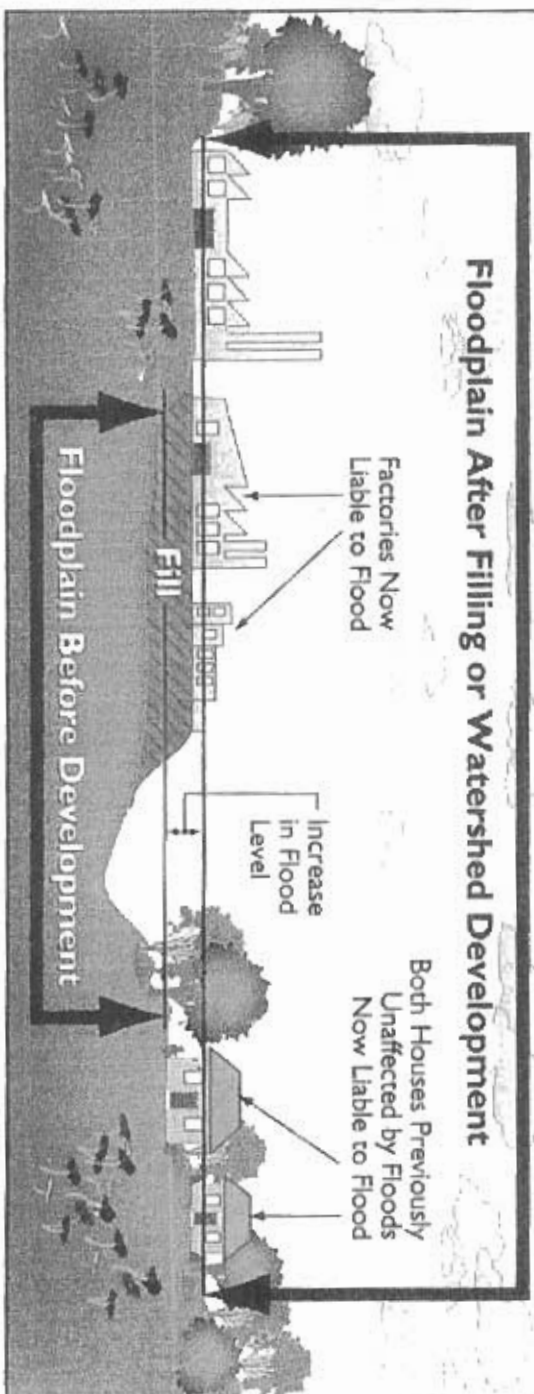


**Note:** Percentage of evapotranspiration not shown

Source: *Water Resources Protection Technology: A Handbook of Measures to Protect Water Resources in Land Development*, by Toby Touraine and Richard Westmacott, The Urban Land Institute, Washington, D.C., 1981

Increasing the amount of paving, streets, sidewalks and roofs throughout the watershed can change a small flood into a significant flood, impacting your property.

# Today's Floodplain is Not Tomorrow's Floodplain



If large areas of the floodplain are filled or the watershed developed, then there will be an increase in the land area needed to store flood waters. This means that your home or business may be impacted.

# Council reviews proposed rule on development in flood plains

BY MARK ANDERSEN  
Lincoln Journal Star

Flood insurance premiums could fall but the price of some new construction could rise substantially under legislation considered Monday by Lincoln officials.

The proposal promises to pit developers against older neighborhoods. It could be the test that determines whether new city growth strategies have emerged from today's election.

Lincoln City Council members received a briefing on the proposal Monday. It will be discussed again after voters choose a new mayor and new council members.

Essentially, the new ordinance would allow no net rise in city floodwaters because of new development. Current city law permits builders to fill flood plains until the additional dirt raises the water level 1 foot in a major flood. The new law would eliminate that additional foot,

allowing no net rise in floodwaters.

"This was a preliminary briefing to understand what no net rise means," council Chairman Curt Donaldson said after the meeting. Much discussion about the ordinance remains.

The ordinance would not outright prohibit fill in flood plains. Builders would be able to excavate an equal amount of land to compensate for the fill they added. They also might pay a fee that could be used to excavate in the flood plain somewhere else.

Land could be excavated upstream of Lincoln to improve flood protection in the city, said Glenn Johnson of the Lower Platte South Natural Resources District.

Councilwoman Coleen Seng asked city planners how development would change under the proposal.

"The development would need to be done differently," answered As-

sistant City Planner Nicole Fleck-Tooze. "(Builders) would have to do a study of no net rise and would have to compensate for fill."

Donaldson said that in allowing the additional foot of floodwater, the city is causing flood plains to grow. "We are allowing the flood plain to increase and putting more people at risk."

Fleck-Tooze said the current ordinance leads to additional flooding in old neighborhoods, along tributaries and downstream. Conversely, the added protection could reduce federal flood insurance premiums up to 20 percent, she said.

Brian Dunnigan of the Natural Resources Commission said the no-net-gain ordinance would be more restrictive than what most states require. About half of all states allow a 1-foot increase, he said. A few states have stricter legislation but the remainder have fewer restrictions, he said. Recently, there has been a trend in some state to tighten restrictions, he said.

Rusty Banks  
Friends of Wilderness Park Boardmember  
5411 South 37th Street  
Lincoln, NE 68516

Lincoln-Lancaster Planning Commission  
555 South 10th  
Lincoln, NE 68508

Dear Members of the Planning Commission:

I would first like to apologize for not being able to attend today's hearing, due to working evening hours on Wednesday's. Please understand that it is my wish to be hear today.

I know that many of my colleagues will be here tonight in support of passing the flood standards for new growth areas, and I will spend as little time as possible duplicating their well prepared statements about "supporting the Golden Rule" through an overriding policy of "No Adverse Impact." Instead I wish to address a couple of concerns raised by developers. It is my hope that I may set their minds at ease.

Some have suggested that the proposed standards will lead to a decrease of available land resulting in more sprawl. However, I believe that it would merely encourage more redevelopment of vacant areas, and responsible development of new growth areas. It is also important to remember that in the event of a land shortage, exemptions are easily obtained. Passing the proposed standards does not shut down development, it merely adds a level of public scrutiny. Not passing the standards simply allows development that might adversely affect landowners without those landowners having any input or objections heard. Rather than a "set of restrictions" the proposed standards can be thought of as "tools for the facilitation of democracy."

The other point I wish to address is almost embarrassing to even be given discussion. Some have suggested that instead of having reasonable amounts of wetlands, we should engineer land in a way that moves water out of town as quickly as possible. Rather than state modern conventional wisdom here, I will throw out some questions for consideration:

- 1). Where would this quickly-moving water go? Is it not a little unfair to send tidal waves to our neighbors at lower elevation?
- 2). What have other cities done, and how has it worked? Most cities that are older than Lincoln are now buying people out of the flood plain and trying to lower water velocity, all at a much greater cost to the taxpayer than if they had managed their watersheds as our proposed standards suggest. (cont.)

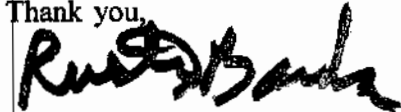




3). Have you walked alongside Salt Creek for any length? I have often. There is plenty of grim evidence to the affects of high-velocity water tearing down a creek. In Wilderness Park, for example, trails are washed out. When will it be apartment parking lots? When will it be single-family dwelling basements? Perhaps never-- *if* the proposed standards are implemented.

In closing, I would like to commend those who worked on the proposed Flood Plain Standards for doing a great job of balancing the need for growth with a responsible plan for stewardship and neighborly love. I urge the members of the Planning Commission to show their support for the Golden Rule by supporting the proposed standards.

Thank you,

A handwritten signature in black ink, appearing to read "Rusty Banks". The signature is stylized with a large, looped "R" and a cursive "Banks".

Rusty Banks